# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 169.

CHARLES H. MARSHALL, CHARLES LAMSON, WILLIAM H. WEBB, LUTHER B. WYMAN, GEORGE BELL, MARY R. BUTLER ET AL., APPELLANTS.

vs.

THE STEAMSHIP ADRIATIC, HER ENGINES, &c., THE OCEANIC STEAM NAVIGATION COMPANY (LIMITED), CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

**FILED JANUARY 17, 1880.**

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*a* UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

CHARLES H. MARSHALL & O'RS, LIBELLANTS & appellants,
*vs.*
THE STEAMSHIP ADRIATIC, HER ENGINE, &C., The Ocean St. Navigation Co. (limited), cla'ts & appellees.

I, George F. Betts, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this fifth day of June, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the said United States the one hundred and first.

[L. S.] GEO. F. BETTS, *Clerk.*

Butler, Stillman & Hubbard, proctors for libellants & appellants.
McDaniel, Lummis & Souther, proctors for claimants and appellees.

*b* District court of the United States for the southern district of New York.

*Stipulation for libellants' costs entered into pursuant to the rules and practice of this court.—Filed the 17th day of February,* 1876.

Whereas a libel was filed in this court on the seventeenth day of February, in the year of our Lord one thousand eight hundred and seventy-six, by Charles H. Marshall and others against the steamship Adriatic, her tackle, etc., for the reasons and causes in the said libel mentioned, and praying that said steamship, etc., may be condemned, and the said libellants and William H. Webb and Daniel S. Appleton, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants, or their sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

C. H. MARSHALL and others,
By CHARLES LAMSON.
DANIEL S. APPLETON.
WM. H. WEBB.

Taken and acknowledged this 17th day of February, 1876, before me.
GEORGE F. BETTS,
*U. S. Commissioner.*

c SOUTHERN DISTRICT OF NEW YORK, ss:

William H. Webb and Daniel S. Appleton, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

DANIEL S. APPLETON.
WM. H. WEBB.

Sworn to this 17th day of February, 1876, before me.

GEORGE F. BETTS,
*U. S. Commissioner.*

Recorded the 17th day of February, 1876.

Approved:

McDANIEL, LUMMIS AND SOUTHER,
*Proctors for Claimants.*

1 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on the 17th day of March, in the year of our Lord one thousand eight hundred and seventy-six.

Present, the honorable Samuel Blatchford, district judge.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, TACKLE, apparel, and furniture.

The above named libellants appear and file their libel against the steamship above named, in the words and figures following, to wit:

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The libel of Charles H. Marshall, Charles Lamson, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson, Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Carey, Daniel S. Appleton, as executor of the last will and testament of Malvina W. Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, credits, and effects of John Lamson, deceased, and John H. Cooley, Julia W. Lewis, Mary M. Griffing, and Elizabeth H. Carter, against
2 the steamship Adriatic, her engines, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest in the same in a cause of collision, civil and maritime, alleges as follows:

First. That your libellants, before and at the time of the collision hereinafter mentioned, were the owners of a certain American ship called the Harvest Queen.

Second. That on the 30th day of December, 1875, the said ship set sail from Cork Harbor, in Ireland, for the port of Liverpool, in England, and

was then stout, tight, staunch, well equipped, and appointed, and had a competent master, and a good and sufficient crew, and was deeply laden with a valuable cargo, which was at the time the property of your libellants.

Third. That while the Harvest Queen was so proceeding to Liverpool, and when she was distant about fifty miles from Cork Harbor and proceeding up the Irish Channel, the wind blowing a stiff breeze from about southwest, and the weather being clear starlight, she was run into by the said steamer Adriatic, the said steamer striking the Harvest Queen on her port bow with such violence as to cause her, with her cargo, to sink in a very short time after the collision; and that by said collision the said ship was totally lost, and her master, officers, and all hands on board of her were lost, as libellants believe.

Fourth. That prior to and at the time of the said collision, the general course of the Harvest Queen was up, and the general course of the Adriatic was down the Irish Channel, and their courses crossed but slightly, if at all.

Fifth. That the said collision was caused by the negligence and improper conduct of those on board the Adriatic, in not having a good and sufficient lookout, in running at too great a rate of speed, in not keeping out of the way of the Harvest Queen, and in not stopping and backing in time to avoid the collision. That the Harvest Queen at, and for a long time prior to, the time of the collision, which occurred at about three o'clock
3 on the morning of the 31st December, 1875, had all her lights properly set and brightly burning, and had a proper watch set; and the said collision was not occasioned by the fault of those on board the said ship.

Sixth. That by the said collision libellants have sustained loss and damage to the amount of two hundred and twenty-five thousand dollars, payment of which sum they have demanded of the owners of said Adriatic, but that the said owners refuse to pay the same, or any part thereof.

Seventh. That the said Adriatic is now lying in the port of New York and within the jurisdiction of this honorable court.

Eighth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said Adriatic, her engines, tackle, apparel, and furniture, and that all persons having an interest therein may be cited to appear and answer on oath all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the damages, as aforesaid, and that the said steamer may be condemned and sold to pay the same, with interest and costs; and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

CHARES LAMSON,
DAN'L S. APPLETON, *Ex'r.*
WM. H. WEBB,
*For Libellants.*

Sworn to before me this 17th day of February, 1876.

GEO. F. BETTS,
*U. S. Commissioner.*

BUTLER, STILLMAN & HUBBARD,
*Libellants' Proctors.*

4 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the 17th day of February, in the year of Lord, one thousand eight hundred and seventy-six, by Charles H. Marshall and others against the steamship Adriatic, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for southern district of New York, on the 7th day of March next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction; otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their alle-
5 gations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this 17th day of February, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundredth.

[SEAL.] GEO. F. BETTS, *Clerk.*

BUTLER, STILLMAN & HUBBARD,
*Proctors for Libellants.*

In obedience to the within monition, I attached the steamship Adriatic, her tackle, &c., therein described, on the 17th day of February, 1876, and the same having been bonded, was discharged from custody on the 17th day of February, 1876.

OLIVER FISK,
*U. S. Marshal.*

Dated March 7th, 1876.

6 At a stated term of the district court of the United States of

America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the seventeenth day of February in the year of our Lord one thousand eight hundred and seventy-six.

Present, the honorable Samuel Blatchford, district judge.

THE STEAMSHIP ADRIATIC, HER TACKLE, &C., *asm.* CHARLES H. MARSHALL AND OTHERS.

And now, Richard John Cortis, agent, on behalf of the Oceanic Steam Navigation Company (limited), owners of the steamship Adriatic, intervening for the interest of the owners of said steamship, appears before the honorable court, and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of Charles H. Marshall and others; and the said Cortis avers that the said Oceanic Steam Navigation Company (limited) were in possession of the said steamship at the time of the attachment thereof, and that the company above named are the true and bona fide owners of the said steamship
7 Adriatic, and that no other person is the owner thereof; wherefore he pray' to defend accordingly.

OCEANIC STEAM NAV. CO. (LIMITED).
By R. J. CORTIS, *Agent.*

Sworn to and subscribed this 17th day of February, A. D. 1876, before me.

GEO. F. BETTS,
*U. S. Commissioner.*

MCDANIEL, LUMMIS & SOUTHER,
*Proctors for Claimant.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Richard John Cortis, being duly sworn, says that he resides in the city of Brooklyn; that he is the agent of the Oceanic Steam Navigation Company (limited); that said company is a corporation created and organized under the laws of Great Britain; that he is duly authorized to put in this claim in behalf of said company as such owners of said steamship Adriatic, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

R. J. CORTIS.

Sworn to and subscribed this 17th day of February, A. D. 1876, before me.

GEO. F. BETTS,
*U. S. Commissioner.*

8 District court of the United States for the southern district of New York (in admiralty.)

*Stipulation for value entered into pursuant to the rules and practice of this court.—Filed the 17th day of February,* 1876.

Whereas a libel was filed on the seventeenth day of February, in the

year of our Lord one thousand eight hundred and seventy-six, by Charles H. Marshall et al. against the steamship Adriatic, her tackle, &c., for the reasons and causes in the said libel last mentioned; and whereas the said steamship Adriatic, her tackle, &c., is now in the custody of the marshal, under the process issued in pursuance of the prayer of said libel; and whereas it has been consented that upon claimant filing due claim and executing stipulations for costs and value, the latter in the sum of three hundred thousand dollars ($300,000), that said steamship Adriatic, her tackle, &c., be released from custody, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimant of said steamship or sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such that if the stipulators undersigned shall, at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to McDaniel, Lummis & Souther, esqrs., proctors for the claimants of said steamship Adriatic, her tackle, &c., abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if
9 any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

THE OCEANIC STEAM NAVIGATION CO.,
By R. J. CORTIS, *Agent.*
JAMES STUART.
JOS. STUART.

Taken and acknowledged this 17th day of February, 1866, before me.
GEO. F. BETTS,
*U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James Stuart and Joseph Stuart, parties to the above stipulation, being duly sworn, each for himself doth depose and say that he resides in the southern district of New York; and said James Stuart that he is worth the sum of three hundred thousand dollars over and above all his just debts and liabilities, and said Joseph Stuart that he is worth the sum of three hundred and fifty thousand dollars over and above all his just debts and liabilities.

JAMES STUART.
JOS. STUART.

Sworn to this 17th day of February, 1876, before me.
GEO. F. BETTS,
*U. S. Commissioner.*

Recorded this 17th day of February, 1876.

Approved on appeal, February 17th, 1876.
SAMUEL BLATCHFORD, *D. J.*

9a District court of the United States for the southern district of New York.

*Stipulation entered into pursuant to the rules and practice of this court.—Filed the 17th day of February,* 1877.

Whereas a libel was filed in this court on the 17th day of February, in the year of our Lord one thousand eight hundred and seventy-six, by Charles H. Marshall and others against the steamship Adriatic, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship, &c., may be condemned, and the parties hereto hereby consenting, and that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands. And whereas, also, a claim has been filed in said cause by Richard John Cortis, agent, on behalf of the Oceanic Steam Navigation Company (limited) owners:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

THE OCEANIC STEAM NAVIGATION COMPANY (LIMITED),
By R. J. CORTIS, *Agent.*
JAMES STUART.
JOS. STUART.

Taken and acknowledged this 17 day of February, 1876, before me.
GEORGE F. BETTS,
*U. S. Commissioner.*

9b SOUTHERN DISTRICT OF NEW YORK, *ss:*

James Stuart and Joseph Stuart, parties to the above stipulation, being duly sworn, doth depose and say that he resides in the southern district of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JAMES STUART.
JOS. STUART.

Sworn to this 17th day of February, 1877, before me.
GEO. F. BETTS,
*U. S. Commissioner.*

Recorded the 17th day of February, 1877.

10 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

And now the Oceanic Steam Navigation Company (limited), intervening for its interest in the steamship Adriatic, her engine, tackle, apparel, and furniture, appears before this honorable court, and for answer to the libel and complaint of Charles H. Marshall, Charles Lamson, and others, alleging themselves to be the owners of the ship Harvest Queen, against

the said steamship, her engines, boilers, and machinery, and her tackle, apparel, and furniture, and against all persons intervening for their interest therein, alleges and articulately propounds as follows:

First. This claimant is a corporation duly incorporated under the laws of the United Kingdom of Great Britain and Ireland, and is the true and lawful owner of the said steamship Adriatic, her engines, boilers, machinery, tackle, apparel, and furniture, a vessel of three thousand eight hundred and eighty-eight tons or thereabouts, being one of the regular line of steamships for the carriage of passengers and freight from the port of Liverpool to the port of New York, and from the said port of New York to the said port of Liverpool. The said steamship was and is a British vessel, duly registered in the port of Liverpool.

Second. This claimant has no knowledge or information sufficient to form a belief as to any of the allegations in the first and second articles of said libel, and it therefore denies the same and each and every of them.

Third. It denies each and every of the allegations in the third, fourth, fifth, and sixth articles of said libel, except that it admits the demand and refusal in the sixth article alleged.

Fourth. It admits the allegations of the seventh article of said libel.

Fifth. It avers, upon its information and belief, that at forty-
11 five minutes past eleven o'clock of the forenoon of the thirtieth day of December, 1875, the said steamship Adriatic left the port of Liverpool for the port of New York direct. She was then stout, tight, staunch, well equipped and appointed, and had a competent master and a good and sufficient crew.

She proceeded down the Irish Channel, and at a quarter past twelve o'clock, midnight, of said last mentioned day, said steamer passed Tuskar light on her starboard beam. She was then headed west, a quarter north, on which course she proceeded until the change hereinafter mentioned. At that time, and during the occurrences hereinafter mentioned, the wind was blowing a fresh gale from the south-southwest. The sky overhead was starlit, but there was a haze over the surface of the ocean.

At five minutes before two o'clock on the morning of December 31st, 1875, the said steamer passed Conibeg lightship on her starboard beam. At thirty-five minutes past two o'clock the said steamer sighted the green light of a vessel about two points on her starboard bow. At that time, and during all the occurrences hereinafter mentioned, the said steamer had a bright white light at her foremast head, a green light on her starboard side, and a red light on her port side. All her said lights were of the power and set in the manner required by the laws of the United States and of Great Britain, and were well trimmed and brightly burning. The force of the wind and of the waves was such as to cover the turtle-back of the said steamer with spray, and make it impossible to keep a lookout there.

The first and third officers of said steamer were on the lookout on the bridge, and an able-bodied seaman, named Alexander Tarbuck or Teback, was also stationed as a lookout on the bridge, and two able-bodied seamen, named William Hamilton and James Mack, were stationed as a lookout on the top of number-three house, which overlooks said turtle-back and
12 commands an uninterrupted view, and is about one hundred and twenty feet from the stem of said steamer. Quartermaster Wilson was at the wheel, and the watch and lookout of said steamer were in all respects sufficient.

At thirty-nine minutes past two o'clock of said last-mentioned morning the said vessel shut in her green light and opened her red light, which, if said lights were properly set, indicated that she had changed her course and was sailing on a course which would intersect that of said steamer. Thereupon the said steamer ported her helm and slowed her engines, and the chief officer ordered the captain to be called. A minute later the said vessel shut in her red light and opened her green light, thus indicating again a change of her course if her lights were properly set. The engines of the Adriatic were immediately stopped, and a minute later were reversed at full speed. At this moment the captain of the Adriatic came from the chart room and ordered the helm hard astarboard; almost immediately after the strange vessel again shut in her green light and showed her red light, which indicated that she had again changed her course, and was again on a course which would intersect that of said steamer. She had her jib, foresail, and mainsail, fore, main, and mizzen topsail set, and was approaching the Adriatic rapidly, with a free wind, at the rate of about nine knots an hour. By this time said steamer had stern-way on her, and the effect of her helm being starboarded while she was going astern was to throw her head to starboard. Before the Adriatic could get sufficient stern-way on her to go as fast as said vessel, and at about fifty minutes past two o'clock in said morning, the jib-boom guys and jib-sheets of said vessel fouled the port davits and the stock of the port anchor of the said steamer. The force of the jerk given by the movement astern of the Adriatic broke off the jib-boom of said vessel, which fell upon the fish davit of said steamer, bent said davit, and thence fell upon the turtle-back of said steamer
13 and bent the rails upon the same, and thence slid along the ship's side and into the water, leaving some blocks and ropes entangled in one of said davits.

The said jerk broke the port anchor stock of said steamer, and part thereof remained hanging from the davits and striking against the side of said steamer, which striking, together with the motion of the jib-boom already stated, caused scratches upon her port bow; the hull of said vessel did not come in contact with the hull of the Adriatic. Said vessel then again changed her course and passed from port to starboard across the bow of the Adriatic; as soon as she was well clear of the said vessel, and at fifty-three minutes past two o'clock, the steamer's engines were stopped, and a minute later were ordered to go ahead slow; it required one or two minutes to stop the motion astern of the Adriatic, but she soon got headway on her and steamed forward towards the said vessel for the purpose of hailing her and offering assistance, if any should be needed. The said vessel was then about three points on the starboard bow of the Adriatic, and was sailing easterly with a free wind. At three o'clock, when the Adriatic was near and somewhat to the eastward of the place where she was when the jib-boom guys of said vessel fouled her as aforesaid, voices were heard from the deck of said steamer and were supposed to be in the water; her engines were immediately stopped and two of her boats lowered; at about the same time the said vessel's beam passed the quarter of the Adriatic, and her lights disappeared; after such disappearance her loom was distinctly visible from the bridge of the Adriatic, and she sailed away to the eastward and disappeared from sight. Meanwhile the Adriatic kept near said boats and moved slowly backward and forward near

the place where such voices were heard, till at about sixteen minutes past four the second of said boats was hoisted in, and the said steamer at about thirty minutes past four o'clock of the same morning proceeded on
14 her course at full speed. The gale was then freshening and the weather becoming thick and dangerous, and it was necessary for the safety of the Adriatic and her passengers and crew that she should proceed on her said voyage.

The said accident happened solely through the negligence of the said vessel in not keeping her course, and in not having (as this defendant charges upon information and belief) a proper watch, lookout, and man at the wheel, and in not having her lights properly set, and in persistently running into this claimant's said steamer, and not in any way through the negligence of the said steamer.

Sixth. The said claimant avers, on information and belief, that the ship, the Harvest Queen, alleged to belong to the libellants, was either sunk on or about the 31st of December, 1875, in the Irish Channel, by a collision with some other vessel, or that she was wrecked on or about that day in said channel, and that her loss was caused thereby, and not by any collision with the said steamer Adriatic. This claimant is unable to allege the particulars of the same more fully, as sufficient time has not elapsed to enable this claimant to ascertain the same definitely.

Seventh. That all and singular the matters herein contained are true, in verification whereof, if denied, the claimant craves leave to refer to the depositions and proofs to be taken and exhibited herein.

Wherefore this claimant prays that this honorable court will be pleased to pronounce against the libel herein, and that the same may be dismissed with costs to this claimant to be taxed.

OCEANIC STEAM NAVIGATION CO. (LIMITED),
By R. J. CORTIS, *Agent.*

McDANIEL, LUMMIS & SOUTHER,
*Proctors for Claimants.*

E. P. WHEELER,
*Advocate.*

15 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Richard J. Cortis, being duly sworn, deposes and says that he is the general agent and manager of the Oceanic Steam Navigation Company (limited), the above named claimant; that the said company is a foreign corporation, incorporated by or under the laws of Great Britain and Ireland, and the officers of the said company are now absent from this State and from the southern district of New York.

That deponent has heard the above answer read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters deponent believes it to be true.

R. J. CORTIS.

Sworn to this 20th day of March, 1876, before me.

[L. S.] JAMES H. GILBERT,
*U. S. Commissioner.*

To the honorable Samuel Blatchford, district judge of the United States for the southern district of New York:

The petition of the Great Western Insurance Company respectfully represents:

First. That your petitioner, at all the times hereinafter mentioned, was and now is a corporation, created and organized under the laws of the State of New York, and engaged in the business of marine insurance, and other business appertaining thereto, in the city of New York.

Second. That heretofore, and on or about the twenty-fifth day of August, 1875, the American ship, called the Harvest Queen, set sail from San Francisco, in the State of California, bound for Queenstown or Cork
16 for orders, for a port in the United Kingdom of Great Britain, and having on board, to be transported by it on freight from said San Francisco to said Queenstown or Cork, and to such port in said United Kingdom of Great Britain aforesaid, a large and valuble cargo of grain, the agreed freight whereon for said voyage amounted to upwards of twenty-five thousand dollars, but the precise amount of which freight is to your petitioner unknown.

Third. That heretofore, and on or about the eighth day of September, 1875, the said freight for such cargo upon the said voyage was insured by your petitioner for account of the persons entitled to such freight in the sum of ten thousand dollars, upon an agreed valuation for the purposes of such insurance of twenty thousand dollars against the perils of the sea, collisions, and divers other risks and perils upon such voyage; such insurance being made and witnessed by a certain policy of insurance, bearing date on said 8th day of September, 1875, duly executed by your petitioner, and issued by it to certain persons doing business under the firm name of C. H. Marshall & Co., for account of whom it might concern. Said insurance continued to be and was in force down to and at the time of the collision hereinafter mentioned.

Fourth. That on the 30th day of December, 1875, said ship set sail from Cork Harbor, in Ireland, where she had called for orders in the prosecution of the voyage aforesaid, for the port of Liverpool, in England, and that at or about three o'clock in the morning of the 31st day of December, 1875, the said ship having said cargo on board, and the freight therefor still pending, and while prosecuting the voyage upon which such freight was insured as aforesaid, was run into and sunk with her said cargo by the steamship Adriatic, and the said ship and cargo were wholly lost, and by reason thereof such voyage was broken up, and such freight upon such cargo upon the said voyage was wholly lost, to the damage of the persons entitled to such freight in the whole amount thereof.

17 Fifth. That thereupon the persons entitled to such freight, so insured as aforesaid, by their agents duly authorized in that behalf, abandoned to your petitioner as underwriter thereon one-half part of the freight upon such cargo for said voyage, and assigned and transferred the same, and all claims and demands for the loss thereof, or damage, or injury thereto to your petitioner, which abandonment and assignment were duly accepted by your petitioner, which has paid to the persons entitled to such freight upon such voyage so insured as aforesaid, the sum of ten thousand dollars, being a total loss on such one-half part of said freight, and that by reason of the premises your petitioner has become, and now

is, subrogated to all the rights of the said insured, in and to such one-half part of said freight, and to all the claims and demands of said insured for loss thereof, or for damage or injury thereto.

Sixth. That there is now pending in this honorable court a suit brought by Charles H. Marshall and others against the said steamship Adriatic, her engines, &c., to recover the damages occasioned by the collision between the said ship Harvest Queen and said steamship Adriatic, above referred to; that the Oceanic Steam Navigation Company (limited) have intervened as claimants of the said steamship, and have filed the usual stipulations for costs and value in this court.

Seventh. And your petitioner further shows, as it is informed and verily believes, that the said collision was occasioned by the negligence, want of skill, and improper conduct of those navigating the said steamship Adriatic and having control thereof, and not by or through any fault or negligence or improper conduct on the part of the persons navigating and having control of said ship Harvest Queen, and as is more fully alleged and set forth in the libel on file in the said pending suit, to which libel and the allegations therein contained in respect thereof your petitioner prays leave to refer with the like effect as if the same were here fully and at large set forth.

18 Wherefore your petitioner prays that, in accordance with the rules and practice of this honorable court, it may be admitted to be heard for its interests in the res now within the control of the court in the above-mentioned cause, and represented by the said stipulation, on behalf of the claimants therein, and that it may be allowed to prosecute as colibellant in the said suit, and to share the benefit of the said stipulations, and that it may have such further and other relief therein as may be proper.

THE GREAT WESTERN INSURANCE COMPANY,
By FERDINAND MOTZ, *President.*

Sworn to before me this 10th day of May, 1876.
EDWARD L. OWEN,
*U. S. Commissioner for the Southern District of New York.*

LOUIS C. LEWIS,
*Proctor for said Petitioner.*

At a stated term of the district court of the United States for the southern district of New York, held at the United States court-rooms in the city of New York, on the nineteenth day of May, 1876.

Present, Hon. Samuel Blatchford, district judge.

CHARLES H. MARSHALL ET AL.
*ag'st*
THE STEAMSHIP ADRIATIC, HER ENGINES, tackle, &c.

Upon reading and filing the petition of the Great Western In-
19 surance Company, sworn to on the tenth day of May, 1876, and the annexed consent of Butler, Stillman & Hubbard, proctors for the libellants, and McDaniel, Lummis & Souther, proctors for the claimants in the above-entitled cause, and upon motion of Louis C. Lewis, proctor for the said petitioner:

Ordered that the said petitioner be, and it is hereby, admitted to be heard for its interest in the res now within the control of the court in said suit, and represented by the stipulations for costs and value heretofore entered into by the claimants and their sureties herein, and that the said petitioner may be, and is hereby, allowed to prosecute as colibellant in this suit, and to share the benefit of the said stipulations.

And it is further ordered that the said claims and demands of said petitioner be deemed to be put in issue by the answer of the claimants now on file in this suit, and that said petitioner be, and it is hereby, allowed to introduce evidence in support of its claims and demands for loss of, or damage or injury to, the freight referred to in its said petition, and that it be heard for its interests herein at the trial of this suit, and upon such other proceedings as may be had or taken therein.

And it is further ordered that the evidence heretofore taken in said suit stand as evidence therein between the said petitioner and the other parties to the said suit, with the like effect as if said petitioner had been a party to such suit at the time of the taking of such evidence.

SAMUEL BLATCHFORD.

We hereby consent to the entry of the foregoing order.
New York, May 11th, 1876.

BUTLER, STILLMAN & HUBBARD,
*Proctors for Libellants.*
McDANIEL, LUMMIS & SOUTHER,
*Proctors for Claimants.*

(Pages 20 to 612, both inclusive, omitted in printing record, per stipulation of counsel.

J. H. McKENNEY,
*Clerk Sup. Ct. U. S.*)

*Stipulation.*

Supreme Court of the United States.

CHARLES H. MARSHALL AND OTHERS, LIBELLANTS & APP'TS, *ag'st* THE STEAMER ADRIATIC, HER ENGINES, &C. } No. 169.

It is hereby consented that the clerk of the Supreme Court in printing the record in this cause omit so much of the record as consists of the testimony given in the court below.
New York, June 29th, 1882.

E. P. WHEELER, *Proct. for Appellee.*
BUTLER, STILLMAN & HUBBARD,
*Proctors for Appellant.*

(Endorsed:) Supreme Court U. S., 1882. October term. No. 169. Chas. H. Marshall et al., app'l'ts, vs. The Steamship Adriatic. Stipulation to omit testimony in printing record. Filed 1st July, 1872.

613 District court of the United States, southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, WILLIAM H. WEBB, and others
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, TACKLE, apparel, and furniture.

*Opinion.*

BLATCHFORD, *J.*

On the 30th of December, 1875, the ship Harvest Queen, an American vessel belonging to the libellants, with a cargo on board also belonging to them, set sail from the harbor of Queenstown, in Ireland, for Liverpool, in England. The steamer Adriatic, a British vessel, sailed from Liverpool for New York on the same day, and proceeded down the Irish Channel. The libel alleges that when the ship was distant about fifty miles from her place of departure, and was proceeding up the Irish Channel, the wind blowing a stiff breeze from about southwest, and the weather being clear starlight, she was run into by the steamer, at about three o'clock a. m., on the 31st of December, the steamer striking the ship on
614 her port bow with such violence as to cause her, with her cargo, to sink in a very short time after the collision; that by said collision the ship was totally lost, and her master and officers and all hands on board of her were lost; that prior to and at the time of the collision the general course of the ship was up and the general course of the steamer was down the Irish Channel, and their courses crossed but slightly, if at all; and that the collision was caused by the negligence and improper conduct of those on board of the steamer, in not having a good and sufficient lookout, in running at too great a rate of speed, in not keeping out of the way of the ship, and in not stopping and backing in time to avoid the collision. The libellants claim to recover against the steamer as damages sustained by the collision the sum of $225,000.

The answer of the steamer avers that the ship was either sunk by a collision with some other vessel than the steamer in the Irish Channel, on or about the 31st of December, or was wrecked on or about that day in said channel, and that her loss was caused thereby, and not by any collision with the steamer.

Without discussing in detail the evidence on the subject, it is sufficient to say that it leaves no doubt on the mind that the steamer, at or about the time and place charged, came into collision with the ship Harvest Queen, belonging to the libellants, in such manner and with such results as to cause the sinking and loss of the ship and of her cargo and of every person on board of her.

The material question in the case to be determined on the evidence is as to whether the steamer was in fault. The vessels were sailing on nearly opposite courses. The steamer was heading from west one-quarter north to west one-half north. The ship was heading about east by south half south. They were thus drawing on to the courses of each other from one point to
615 one point and a quarter. The ship was sailing at the rate of from eight to nine knots an hour, and the steamer at the rate of about twelve.

The steamer made the green light of the ship at about two points on the starboard bow of the steamer. The red light of the ship was not then visible to the steamer. The white and green lights of the steamer, and not her red light, ought then to have been visible to the ship, and undoubtedly were, and it was her duty to heed them. Under the circumstances thus existing it was the duty of the steamer to keep out of the way of the ship, and it was the correlative duty of the ship to allow the steamer to keep out of her way, and not to embarrass or hamper the steamer in performing such duty. The position was one of safety. The green lights of the two vessels, and only those, were exposed to each other. There was no exposing of green to red. Under this condition of things the steamer kept on her course, neither porting nor starboarding, nor slowing, nor stopping, nor reversing. It was proper for her to so keep on her course. She had a right to presume that, in the presence of her exposed green light, the ship would continue to expose her green light, and that only. There was no obligation on the steamer then to starboard, because the vessels were at such a distance apart, probably two miles, that if both kept their courses the ship was certain to pass clear on the starboard hand of the steamer. She would draw more and more on the starboard bow of the steamer. And such was the fact. The ship's green light opened more to the starboard of the steamer until it got to be some three and a half points on the starboard bow of the steamer. This was a position of safety. The ship would not reach the path of the steamer until she was astern of the steamer. At this juncture, and some four minutes after the ship's green light had first been seen by the steamer, the ship shut in her green light and exposed her red light; all the time before that she had exposed her green light, and
616 that alone, steadily, with no glimpse of her red light. Here, then, arose an exigency. Here was danger. The first officer of the steamer, Mr. Bence, was on her bridge watching the green light off his starboard bow. He had charge of the steamer at the time, and was responsible for her navigation. He had seen the green light for four minutes, and had seen it thus open more on his starboard bow. He could not tell to what species of craft it belonged, whether to a fore-and-aft vessel, which could sail within five points of the wind, or to a square rigged vessel, which could not sail nearer to the wind than from six to seven points. He saw a movement in the approaching vessel, indicated by the change in her lights, which it was reasonable and proper for him, under the circumstances, to take as evidence of her intention to throw herself across his onward path. He was called upon suddenly, and in an exigency, to determine whether he would do anything; and, if something, what. He could, as to the course of his vessel, do one of three things—either let it remain as it was, or starboard or port. He ported. The libellants insist that he erred in porting; that if he had not ported there would have been no collision; that he ought to have starboarded, or at least have kept on the same course; that, if he had even kept his course, there would have been no collision, as the ship could not have reached his path ahead of him; and that, if he had starboarded, he would certainly have sailed away from all danger. It is easy to criticise and to be wise after the event. Mr. Bence seems to have been a good seaman, of experience and capacity, watchful, thoughtful, and deliberate. Much must be left to the judgment of such a man, charged with the safety of a large steamer, and of the lives of

those on board, as to which one of two or more methods he will adopt in a given exigency, if it is not shown that the one he adopted was such as to indicate that there was no fair exercise of reasonable judgment in concluding to adopt it. By determining to port and throw the head of the steamer to starboard, Mr. Bence took a course which would certainly, if the approaching vessel continued to display only her red light, very soon bring the two vessels on parallel courses, with their red lights exposed to each other. That was safety. To take that course was prudent, and, at the distance apart the two vessels were, it would have been successful, if the ship had continued to expose only her red light. The steamer's duty of avoiding the ship did not cease, because the ship shut in her green light, and exposed her red light. It continued in the altered circumstances. As the exigency was sudden and unforeseen, and as the vessels were nearing each other rapidly, promptness of decision and action on the part of the steamer was necessary. Even if the ship had continued to expose only her red light, the steamer might, it may be conceded, have passed her in safety by going on at the same speed as before, without starboarding or with starboarding. But I think it quite clear that if the ship had continued to expose only her red light, the steamer would, having ported, have equally avoided a collision with the ship, especially as on the weight of the evidence the steamer's engines were slowed at the time her helm was ported. The steamer adopted this manœuvre of porting and slowing deliberately and wisely. There was no apparent necessity at that time that she should stop and reverse her engines. She discharged her duty of avoiding the ship by proper movements for the second time. She did this, although the ship was in fault in her movements in the presence of what she could and should have seen was a steamer. These movements of the steamer had been made, and she was swinging to starboard, under her port helm, when the ship shut in her red light and exposed only her green light. Seeing this confusion of purpose in the ship, the engines of the steamer were stopped and reversed at full speed. This was proper. There was nothing else for the steamer to do. The ship had twice turned from a course and position in reference to which the steamer had acted, and acted in a way which would have given safety to the ship. Whatever followed the ship had brought upon herself. For what ensued after the ship exhibited her green light the second time the steamer was not responsible. Before the collision the ship made another change, and shut in her green light, and showed only her red light.

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A strenuous effort was made on the part of the libellants to induce the belief that the changes by the ship from green to red and from red back to green, were produced by the yawing of the ship in the following sea and with the free wind. But it is impossible to believe this, for the green light was visible at first, alone, for four minutes continuously, with no glimpse of the red light, and the green light opened from two points on the starboard bow of the steamer to three and a half points on the same bow before the red light appeared. The effects of yawing would have been sooner observed.

It is earnestly contended for the libellants that the red light of the ship, because of which the steamer ported, was in sight for only one minute, and that when the green light of the ship again appeared, the steamer

should have kept going ahead and have starboarded. The ship was a third time, and in a third position, imposing on the steamer the duty of avoiding her, after the steamer had twice assumed and discharged that duty. The distance between the vessels was diminishing fast, and with this erratic vessel nearly ahead of him, and the danger of collision apparent and imminent, it was the highest duty of the steamer to stop and reverse her engines. She did so, and her engines were reversed at full speed, and, on the evidence, she had got sternway on at the time of the collision. If it were to be conceded that the stopping and reversing was an error of judgment, it could not be held to have been a fault, occurring as it did
619 after what had previously happened, but would be regarded as an error which the libellants could not make a ground of complaint. But it is not to be admitted that it was an error of judgment.

Although the court is asked to condemn the movements of the steamer, no testimony of any expert in seamanship or in navigation is adduced to show that such movements were faulty or unwise or imprudent or unintelligent. The case of the libellants seems to rest on the proposition that it was the duty of the steamer to keep out of the way of the ship, and that it is not established that the ship changed her course. But the steamer could act only in view of what she saw, and of what she had a right reasonably to infer from what she saw. Her movements were taken with a reasonable certainty that they would give safety to both vessels. She exercised the highest degree of diligence imposed by the law in her efforts to avoid the ship. She exercised that diligence discreetly throughout to the end, in all the emergencies which the vacillating movements of the ship threw upon her.

The libel is dismissed, with costs.

Thomas E. Stillman and Henry J. Scudder, for the libellants.
Everett P. Wheeler and Joseph H. Choate, for the claimants.

620 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms in the city of New York, on Thursday, the tenth day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

Present, the honorable Samuel Blatchford, district judge.

CHARLES H. MARSHALL AND OTHERS
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, tackle, &c. } 26–225.

This case having been heard on the pleadings and proofs and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libel filed herein be, and the same is hereby, dismissed, with costs to be taxed against the libellants.

And the costs of the claimants having been taxed at the sum of thirteen hundred and seventy-five dollars and ninety-six cents (the court having dismissed the appeal of the United States marshal for the amount of

$1,127.50 claimed by him, and affirming the clerk's taxation of $3.72 in said marshal's bill of costs), it is further ordered, adjudged, and decreed that said claimants recover against the libellants herein the sum of thirteen hundred and seventy-five dollars and ninety-six cents, the amount of their costs taxed as aforesaid.

621 And it is further ordered that unless an appeal be taken from this decree within the time limited by law and prescribed by the rules and practice of this court, the stipulators for libellants' costs forthwith pay into court the amount of their stipulation, and that upon such payment thereof, the clerk distribute the proceeds in part satisfaction of the claimants' taxed costs, the claimants' stipulation for costs and value to be cancelled of record and the stipulators released from all liability thereon should there be no appeal taken by libellants within the time prescribed as aforesaid.

(Signed) SAMUEL BLATCHFORD.

A true copy.

[L. S.] GEO. F. BETTS, *Clerk.*

GENTLEMEN: Please to take notice that the within is a copy of a decree this day duly entered with the clerk of the district court of the United States for the southern district of New York.

Dated New York, May 10th, 1877.

Yours, &c.,

McDANIEL, LUMMIS AND SOUTHER,
*Proctors for Claimants, 8 and 10 Pine street, N. Y.*

To Messrs. BUTLER, STILLMAN AND HUBBARD,
*Proctors for Libellants, 111 Broadway.*

622 District court of the United States for the southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., whereof the Oceanic Steam Navigation Company (limited) are claimants.

GENTLEMEN: Please take notice that the libellants herein appeal from the final decree of the district court herein, made and entered on the 10th day of May, 1877, to the next circuit court.

New York, May 14th, 1877.

BUTLER, STILLMAN AND HUBBARD,
*Proctors for Libellants and Appellants.*

To McDANIEL, LUMMIS AND SOUTHER,
*Proctors for Claimants and Respondents.*
LOUIS C. LEWIS, Esq.,
*Proctor for Colibellants.*
GEORGE F. BETTS, Esq.,
*Clerk of the District Court of the United States for the Southern District of New York.*

Filed May 14th, 1877.

Due and timely service of the within notice of appeal, with notice
623 of service of the same upon the clerk of this court and the other parties to this action is, hereby admitted.

New York, May 14th, 1877.

McDANIEL, LUMMIS AND SOUTHER,
*Proctors for Claimants.*
LOUIS C. LEWIS, *Proctor for Colibellants.*

Circuit court of the United States for the southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, tackle, apparel, and furniture, whereof the Oceanic Steam Navigation Company (limited) are claimants and respondents.

To the honorable the circuit court of the United States for the southern district of New York:

The appeal of Charles H. Marshall, Charles Lamson, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson, Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Carey, Daniel S. Appleton, as executor of the last will and testament of Malvina W.
624 Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, credits, and effects of John Lamson, deceased, and John H. Cooley, Julia W. Lewis, Mary M. Griffing, and Elizabeth H. Carter, libellants and appellants herein, respectfully showeth:

That on or about the 17th day of February, 1876, the libellants and appellants above named exhibited their libel in the district court of the United States for the southern district of New York against the above named steamship Adriatic, her engines, tackle, apparel, and furniture, claiming two hundred and twenty-five thousand dollars damages for the reasons set forth in the said libel, and praying, among other things, that the said steamship might be condemned to pay the said damages, with costs.

That process thereupon issued out of said court against the said steamship, and that thereupon the Oceanic Steam Navigation Company (limited) appeared and filed a claim to the said steamship, and a stipulation for value of the same in the amount of three hundred thousand dollars.

That thereafter, and on or about the 20th day of March, 1876, the said claimants filed their answer to the said libel in the said district court, praying, among other things, that the said libel be dismissed with costs to the claimants, as by reference to the said libel and the said answer may more fully appear.

That on the 5th day of January, 1877, the said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, upon the testimony and proofs advanced by the respective parties, and the depositions and proofs taken in the said cause by them, and the said judge, having advised thereon, did, on the 10th day of May, 1877,

make a final decree in said cause, whereby it was, among other things, ordered, adjudged, and decreed that the libel in the said cause be thereby dismissed with costs, and that the claimants recover against the libel-
625 lants the sum of thirteen hundred and seventy-five dollars and ninety-six cents, the amount of their costs taxed.

And these libellants and appellants are advised and insist that the said decree is erroneous, inasmuch as the said libel should not have been dismissed, but that there should have been a decree in favor of these libellants and appellants for their demands and the costs in the said libel mentioned.

And these appellants, for these and other reasons, appeal from the whole of the said decree in favor of the claimants and respondents, to the next circuit court to be held in this district, and on the said appeal they intend to have the said cause heard anew on the pleadings, depositions, and proofs in the said district court and on new proofs and depositions to be offered in the said circuit court; and it prays that the said decree, and every part thereof, may be reversed, with costs, or such other decree thereupon made as to the said circuit court shall seem just, and that the said claimants and respondents be condemned to pay to these appellants their costs and damages in the premises.

And these appellants pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed, or such other decree therein be made as to the said circuit court shall seem just, and that the claimants, respondents, and appellees be condemned to pay to the libellants and appellants their costs and damages in the premises.

New York City, southern district of New York, May 14th, 1877.

BUTLER, STILLMAN AND HUBBARD,
*Proctors for Libellants and Appellants.*

Filed May 14th, 1877.

626 Due and timely service of the within petition of appeal, with notice of filing the original, is hereby admitted.

New York, May 14th, 1877.

McDANIEL, LUMMIS & SOUTHER,
*Proctors for Claimants.*

LOUIS C. LEWIS, *Proctors for Colibellants.*

626*a* District court of the United States, southern district of New York.

CHARLES H. MARSHALL AND OTHERS
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Albert H. Switzer, being duly sworn, deposes and says that he is a clerk in the office of Butler, Stillman and Hubbard, proctors for the libellants herein; that on the 14th day of May, 1877, at number 10 Pine street, in the city of New York, he served the annexed notice of appeal and petition of appeal herein on McDaniel, Lummis and Souther, proctors for the claimants herein, by delivering a copy of the same to a clerk in their office, and obtaining an admission of service, in writing, from them;

that he also served the said notice of appeal and petition of appeal upon Louis C. Lewis, proctor for co-libellants herein, by delivering a copy of the same to a clerk in the office of the said proctor, at number 64 Wall street, New York, and subsequently obtaining from the said proctor an admission of service, in writing, of the said papers.

A. H. SWITZER.

Sworn to before me this 31st day of May, 1877.

JAMES GOUDGE,
*Notary Public, Kings County, N. Y.,*
*with certificate filed in New York County.*

*Bond for costs and damages on appeal.*

District court of the United States of America for the southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson, Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Carey, Daniel S. Appleton, as executor of the last will and testament of Malvina W. Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, and effects of John Lamson, deceased; and John H. Cooley, Julia W. Lewis, Mary M. Griffing, and Elizabeth H. Carter, libellants and appellants,

*against*

THE STEAMSHIP ADRIATIC, HER ENGINES, tackle, apparel, and furniture, whereof the Oceanic Steam Navigation Company (limited) are claimants and appellees.

Know all men by these presents that we, William H. Appleton
627 and Israel Corse, of the city of New York, are held and firmly bound unto the above-named claimants and appellees in the sum of three thousand dollars, to be paid to the said claimants and appellees, for the payment of which sum, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the seventeenth day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas on the 10th day of May, in the year one thousand eight hundred and seventy-seven, a final decree was rendered by the district court of the United States of America for the southern district of New York in the above-entitled action, being a suit in admiralty, brought by the above-named libellants and appellants against the above-named claimants and appellees in said district court of the United States for the southern dis-

trict of New York, to recover the sum of two hundred and twenty-five thousand dollars damages, for the reasons set forth in the libel herein, and praying, among other things, that the above-named steamship might be condemned to pay the said damages and costs, and that, in and by said decree, it was adjudged and decreed, among other things, that the libel filed in the said suit be thereby dismissed with costs, and that the above-named claimants recover against the above-named libellants the sum of thirteen hundred and seventy-five $\frac{96}{100}$ dollars, the amount of their costs as taxed;

And whereas said final decree was duly filed in the office of the clerk of said district court of the United States for the southern district of New York, on the 10th day of May, 1877;

And whereas the libellants above-named, feeling aggrieved thereby, have appealed from the said final decree to the circuit court of the United States of America for the southern district of New York, in the second
628 circuit; Now, therefore, the condition of this obligation is such that if the above-named libellants and appellants shall prosecute their said appeal to effect, and answer and pay all damages and costs which shall be awarded against the said appellants if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Sealed and delivered and taken and acknowledged this seventeenth day of May, one thousand eight hundred and seventy-seven.

WM. H. APPLETON. [SEAL.]
ISRAEL CORSE. [SEAL.]

In presence of (the words "and pay," on line six, page four, interlined before execution; and on same page, line seven, words "which shall be awarded against the said appellants," also interlined before execution)—

C. S. SIMPSON.
GEORGE F. BETTS,
*U. S. Commissioner.*

UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

William H. Appleton and Israel Corse, within named, being severally duly sworn, do each depose and say—William H. Appleton, that he resides at number 3 Madison avenue, in the city of New York; and Israel Corse, that he resides at number 104 Fifth avenue, in the city of New York, and each that he is a freeholder within said district and worth the
629 sum of three thousand dollars over and above all his just debts and liabilities.

WILLIAM H. APPLETON.
ISRAEL CORSE.

Sworn to before me this 17th day of May, 1877.

GEO. F. BETTS,
*U. S. Commissioner.*

We approve of the foregoing bond on appeal as to form and sufficiency.
Dated New York, May 17th, 1877.

McDANIEL, LUMMIS AND SOUTHER,
*Proctors for Appellees.*

Approved.

SAM'L BLATCHFORD,
*District Judge.*

United States district court, southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*against*
THE STEAMSHIP ADRIATIC, &c., WHEREOF THE Oceanic Steam Navigation Company (limited) are claimants and appellees.

Please take notice that a bond for costs and damages, on appeal to the circuit court of the United States for the southern district of New
630 York, in the second circuit, from the final decree of the district court, entered herein on the 10th day of May, 1877, duly approved, was this day duly filed in the office of the clerk of this court.
Dated New York, May 17th, 1877.

Yours, &c.,

BUTLER, STILLMAN AND HUBBARD,
*Proctors for Libellants and Appellants.*

To Messrs. McDANIEL, LUMMIS AND SOUTHER,
*Proctors for Claimants and Appellees.*
LOUIS C. LEWIS,
*Proctor for Colibellants.*

Due service of a copy of the within notice is hereby admitted.
New York, May 18th, 1877.

McDANIEL, LUMMIS AND SOUTHER,
*Proctors for Appellees.*
LOUIS C. LEWIS, *Proctor for Colibellants.*

The whole of the printed matter of these apostles is correct.
N. Y., June 5, 1877.

McDANIEL, LUMMIS & SOUTHER,
*Proctors for Cl'm'ts & Appellees.*
BUTLER, STILLMAN & HUBBARD,
*Proctors for Appellants and Libellants.*

(Endorsed:) U. S. circuit court. Filed June 6, 1877. John I. Davenport, clerk.

631 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Monday, the 26th day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*vs.*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., whereof the Oceanic Steam Navigation Company (limited) are claimants and appellees.

The above-entitled cause coming on to be heard on appeal from the decree of the district court herein, Thomas E. Stillman, esq'r, of counsel for the libellants and appellants, reads from the apostles evidence on behalf of said libellants and appellants.

H. H. M.

632 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Tuesday, the 27th day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*vs.*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., whereof the Oceanic Steam Navigation Company (limited) are claimants and appellees.

This cause being still on for argument on appeal from the decree of the district court herein, Mr. Stillman reads from the apostles evidence on behalf of said libellants and appellants.

E. P. Wheeler, esq'r., of counsel for the claimants and appellees, reads from the apostles evidence on behalf of said claimants and appellees.

H. H. M.

633 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Wednesday, the 28th day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*vs.*
THE STEAMSHIP ADRIATIC, HER ENGINES, &c., whereof the Oceanic Steam Navigation Company (limited) are claimants and appellees.

This cause being still on for argument on appeal from the decree of the district court herein, Mr. Wheeler reads from the apostles evidence on behalf of said claimants and appellees.

Mr. Stillman reads from the apostles evidence on behalf of said libellants and appellants.

Mr. Stillman is heard on behalf of said libellants and appellants.

H. H. M.

634 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Thursday, the 29th day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants & appellants,
*vs.*
THE STEAMSHIP ADRIATIC, HER ENGINES, &c., whereof the Oceanic Steam Navigation Company (limited) are claimants and appellees.

This cause being still on for argument on appeal from the decree of the district court herein, Mr. Stillman continues his argument on behalf of the libellants and appellants.

H. H. M.

635 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Friday, the 30th day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants & appellants,
*vs.*
THE STEAMSHIP ADRIATIC, HER ENGINES, &c., whereof the Oceanic Steam Navigation Company (limited) are claimants and appellees.

This cause being still on for argument on appeal from the decree of the

district court herein, Mr. Stillman finishes his argument on behalf of said libellants and appellants.

Mr. Wheeler is heard on behalf of the claimants and appellees.

H. H. M.

636 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Monday, the 2d day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*vs.*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., whereof the Oceanic Steam Navigation Company (limited) are claimants and appellees.

This cause being still on for argument on appeal from the decree of the district court herein, Mr. Wheeler finishes his argument on behalf of the claimants and appellees.

Joseph H. Choate, esq., of counsel for the claimants and appellees, is heard on behalf of said claimants and appellees.

H. H. M.

637 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the 3d day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants & appellants,
*vs.*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., whereof the Oceanic Navigation Company (limited) are claimants and appellees.

This cause being still on for argument on appeal from the decree of the district court herein, Mr. Choate finishes his argument on behalf of the claimants and appellees.

Mr. Stillman is heard in reply on behalf of the libellants and appellants.

H. H. M.

638 At a stated term of the circuit court of the United States of

America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the 4th day of June, in the year of our Lord, one thousand eight hundred and seventy-nine.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*vs.*
THE STEAMSHIP ADRIATIC, HER ENGINES, &c., whereof the Oceanic Navigation Company (limited) are claimants and appellees.

This cause being still on for argument on appeal from the decree of the district court herein, Mr. Stillman finishes his argument in reply on behalf of the libellants and appellants.

C. a. v.

H. H. M.

639 *Findings of fact and conclusions of law submitted and proposed on behalf of the libellants and appellants.*

Circuit court of the United States for the southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., whereof the Oceanic Steam Navigation Company (limited) are claimants and appellees.

FINDINGS OF FACT.

First. That on the evening of the 30th day of December, 1875, the ship Harvest Queen was towed out of Cork Harbor, Ireland, by a tug, which left her about half-part eight o'clock, at a point between four and five miles south-southeast of Roche's Point, and bound for Liverpool, England.

640 Second. The usual route for vessels between Cork Harbor and Liverpool is past Tuskar light off the southeastern extremity of Ireland, and the usual course of a sailing vessel from the point where the Harvest Queen was left by the tug to Tuskar light is east by south by compass, but in order to make that course, under the circumstances of wind and sea as they were that night, the Harvest Queen would have been obliged to steer a course somewhat more southerly.

Third. Between half-past two and three o'clock in the morning of the 31st day of December the Harvest Queen had reached a point about south of Waterford Hook light, and distant therefrom between ten and fifteen miles.

Fourth. The Harvest Queen was well manned and officered, was tight and staunch, and had her lights properly set and brightly burning.

Fifth. She was proceeding at a rate of speed of about nine knots per hour, which speed she had maintaned on an average from the time of leaving Cork Harbor.

Sixth. The Harvest Queen was a full-rigged ship, without steam power, of 1,626 tons, and could not sail closer to the wind than seven points.

641 Seventh. The steamship Adriatic, an iron vessel four hundred and fifty feet in length, left the port of Liverpool, bound for New York, on the 30th day of December, 1875.

Eighth. She passed Tuskar light about midnight, and at five minutes before two o'clock, on the morning of the 31st day of December she passed Coningbeg light abeam, at a distance of about four miles.

Ninth. Her course by compass was at this time west one-quarter north.

Tenth. Her rate of speed was twelve knots per hour, which was the highest rate of speed to which she could be pressed in the existing conditions of wind and sea.

Eleventh. The night was dark, there being no moon, and the sky was clear, with detached clouds.

Twelfth. The wind was blowing a fresh gale from south-southwest by compass, and a strong sea was setting in from the southward.

642 Thirteenth. The Adriatic had a bright masthead light, and the regulation side-lights set and burning, and was propelled by steam, and was not under sail.

Fourteenth. She had two lookouts, Hamilton and Mack, on number 3 house, one hundred and thirty feet from the stem, and none further forward. Hamilton was on the port side of number 3 house, and Mack on the starboard side.

Fifteenth. The steamer was in the charge of the first officer, Bence, who was stationed on the bridge, one hundred and seventy-five feet from the stem, with a third lookout, named Tebak.

Sixteenth. Shortly after five bells—half-past two o'clock—the lookout Hamilton discovered the red or port light of the Harvest Queen about one point and a half on the Adriatic's starboard bow, and caused the other lookout to report it to the officer of the deck, by striking two bells.

Seventeenth. Striking two bells was the usual and customary method for the lookouts on the Adriatic to report a light on the starboard bow.

643 Eighteenth. The light was then distant about three and a half miles.

Nineteenth. A few minutes later, the red light of the Harvest Queen had broadened to about two points on the steamer's starboard bow, and was distant from the Adriatic about one and a half miles.

Twentieth. Up to this time the course of the Adriatic had been west one-quarter north by compass.

Twenty-first. At this time the helm of the Adriatic was ported, causing her head to swing slowly to starboard bow.

Twenty-second. The Adriatic continued to swing to starboard under the influence of her port-helm, until the red light of the Harvest Queen bore only half a point on her starboard bow.

Twenty-third. The Harvest Queen was then distant from the Adriatic less than half a mile.

644 Twenty-fourth. At this time the Adriatic's helm was steadied and she bore down upon the Harvest Queen almost head and head, striking her on the port side of the stem, cutting through her breast-hook and opening her to the water's edge.

Twenty-fifth. The Harvest Queen did not, from the time her light was reported by the lookout of the Adriatic up to the time of the collision, change her course, which was somewhat to the eastward of southeast by compass.

Twenty-sixth. At the time of the collision the Adriatic was making headway through the water.

Twenty-seventh. The Adriatic immediately backed away from the place of collision a mile or more.

Twenty-eighth. In consequence of the collision the Harvest Queen and her cargo sank within fifteen minutes, and became a total loss.

Twenty-ninth. All on board the Harvest Queen perished that night as a result of the collision.

645 Thirtieth. At the time of the collision the Adriatic was heading somewhat to the west of northwest by compass.

Thirty-first. The first officer of the Adriatic, Bence, who was directing her movements, was inattentive and negligent in the discharge of his duties, and incompetent to perform them.

Thirty-second. The master of the Adriatic was on her deck at the time of the collision.

Thirty-third. After the collision the master of the Adriatic did not stay by the Harvest Queen to render to her and her officers and crew such assistance as was practicable and necessary to save them from danger caused by the collision.

Thirty-fourth. The master of the Adriatic did not give to the master or persons in charge of the Harvest Queen the name of his own vessel and her port of registry, and the names of the ports to and from which she was bound.

Thirty-fifth. The Harvest Queen and her cargo were, at the time of the collision, owned by the libellants.

646 CONCLUSIONS OF LAW.

First. The Adriatic, in proceeding at so high a rate of speed with the weather and the sea as they were the night of the collision, was guilty of negligence, which contributed to the collision.

Second. The Adriatic in proceeding on her voyage with her lookouts stationed as they were the night of the collision was guilty of negligence, which contributed to the collision.

Third. The Adriatic being under steam was bound to keep out of the way of the Harvest Queen, she being under sail alone; and in not performing her duty in this respect was guilty of n'gligence, which caused the collision.

Fourth. The Harvest Queen was not guilty of any negligence which contributed to the collision.

647 Fifth. The decree of the district court herein should be reversed,

and a decree entered in favor of the libellants, and against the steamship and her claimants, for the loss sustained by them, with costs.

BUTLER, STILLMAN AND HUBBARD,
*Proctors for Libellants and Appellants.*
THOMAS E. STILLMAN, *Advocate.*

648 U. S. circuit court for the southern district of New York.

CHARLES H. MARSHALL AND OTHERS, OWNERS of the ship Harvest Queen and her cargo, appellants,
*against*
THE STEAMSHIP ADRIATIC, THE OCEAN STEAM Navigation Co., claimant, appellee.

*Requests for findings submitted on behalf of appellee.*

The appellee requests the court to find as follows:

AS MATTER OF FACT:

First. The Harvest Queen was a vessel of 1,626 tons, American measurement, and weighed, with her cargo, about 5,000 tons. She was
649 187 feet long, 42.6 feet broad, and 28.6 feet deep, and was laden with a cargo of grain in bulk. She put into Queenstown December 30, 1875, for orders; received orders to sail for Liverpool, was towed to sea, and cast off the tug at 8.30 a. m. of that day from four to five miles SSE. of Roche's Point. There was then a strong breeze of wind from the SW., and about one and a half hours' ebb tide. The ebb here runs from east to west. The wind was free for the ship.

Second. Drawings of the Harvest Queen are annexed hereto, and form part of these findings.

Third. The Adriatic was an iron steamer, 450 long, 42 feet wide, 30 feet deep, and weighed 8,000 tons; she was stout, tight, and staunch, and was properly officered, manned, and equipped. She sailed from Liverpool at noon of December 30, 1875, and passed Tuskar light, off the southeast corner of Ireland, a quarter of an hour after midnight. At 2.35 a. m. December 31, 1875, she was about 52 miles to the eastward of Roche's Point, and 15 miles SSE. from the Hook Tower light, and was on a course west one-quarter north. At that time the wind was from SW. to SSW., blowing a fresh gale, with a force indicated by the figures 7 or 8 (on the Beaufort scale, of which a copy is annexed hereto.)

The night was starlight, with driving clouds, and there was a high sea.

Fourth. At this time Captain Jennings, the commander of the Adriatic, was lying in his clothes on a sofa in the chart-room, which adjoins the wheel-house, and opens into it. This is just abaft the bridge. He had been for fourteen hours previously continuously on the bridge. The first officer, Mr. Bence, was on the starboard side of the bridge, and a sailor, Tebak, on the lookout on the port side. The third officer, Richard Williams, was standing near the wheel-house, quartermaster Wilson was at the wheel, and quartermaster Thomas Williams was in the wheel-house. Two

seamen, Hamilton and Mack, were on the lookout on the top of number three house.

Fifth. The forward part of the Adriatic is roofed over with what
650 is called (from its shape) the turtle back, or whale back, and there was so much spray on this that lookouts stationed there could not have seen, and they were consequently stationed on the top of this house just aft the turtle back, and raised above it, but below the level of the bridge.

Sixth. The Adriatic had her white head light and her green and red side lights properly set and brightly burning.

Seventh. At 2.35 a. m. Mr. Bence saw, with his night glass, a green light, about a point and *and* a half on his starboard bow, and from two to two and a half miles from him. He made no change in the movement of his vessel, showing as he did his own green light to that of the stranger, and indicating thus that they were on parallel or diverging courses.

The vessel bearing the light was then on an east by south course, and advancing at the rate of eight or nine knots an hour. This course and speed could not, however, be ascertained at that time by those on the Adriatic.

Eighth. At 2.39 a. m. the green light of the stranger changed to red, and Mr. Bence at once ordered his helm hard a-port, so as to show his red light to the stranger, and bring them again on parallel courses. The order was immediately executed, and the head of the Adriatic began to swing to starboard.

Ninth. At 2.40 the red light of the stranger again changed to green. By this time the head of the Adriatic had swung about a point to starboard, and was swinging more and more in that direction under a port helm. This second change indicated, therefore, that the two vessels were approaching on converging lines.

Tenth. They were approaching each other when first seen, at the rate of about 20 miles an hour, and were not more than from a mile to a mile and a quarter apart when this second change took place. The Adriatic's engines were immediately stopped, and a minute after, as soon as the requisite changes in the machinery could be effected, were reversed. This was at 2.41 a. m.

651 Eleventh. The respective times at which the orders to the engine room were given were entered in chalk, on a bulkhead in the engine room immediately after the orders were given, and were copied the same night into the engineer's scrap (or draft) log. A copy of these entries is annexed.

Twelfth. At about the time the order to reverse was given, the captain was called, and about 2.45 a. m. came on deck.

During the intermediate time the Adriatic had swung still further to starboard, and had constantly diminished her speed, till she stopped. This was about 2.43 a. m. It took about a minute to get sternway on her. When the captain came out on deck she was just gathering sternway, and the foam from the screw was just abreast the wheelhouse door.

Thirteenth. The captain stepped to the side of his vessel, saw the foam, felt the reverse beat of the screw, and knew that the steamer had sternway on. He saw from the indicator in the wheelhouse that the helm was hard a-port.

Fourteenth. Knowing thus the position of the helm and the movement of his vessel, he looked into the darkness and saw a green light about two points on his starboard bow. In a moment both the green and the red lights of the stranger were exhibited. This indicated that she was bearing directly for him. A moment more and the green light was shut out, and the red alone was visible.

Fifteenth. Immediately on seeing the green light he gave the order to hard a-starboard. A starboard helm, with the steamer going astern, has an effect similar in kind to that produced by a port helm when she is going ahead. The tendency of this order, therefore, was to bring the vessels again on parallel courses, which was throughout the aim of those in charge of the Adriatic.

Sixteenth. Immediately after the red light was exhibited for the second and last time, the strange ship loomed out of the darkness, and under the influence of a starboard helm ran her jib boom over the turtleback
652 of the Adriatic. Some of the rigging of the jib boom and bowsprit caught in the Adriatic's port fish-davit about thirty-seven feet from her stem. The shock of the blow and the strain produced by the motion astern of the Adriatic broke the stranger's jib boom at the cap, and it came down with great violence on the fish-davit, and bent it; then slid upon the turtleback, and bent the guard rail, and broke two of the stanchions which supported this, and fell thence against the side of the Adriatic and into the water. No shock from the collision was felt abaft the foremast of the Adriatic. She was not seriously injured by the collision, and no damage was done to her plating.

Seventeenth. Immediately after the collision the strange ship lay across the bows of the Adriatic, from port to starboard. Her jib or foretopmast staysail, topsails, and main top-gallant sail were set. Her sails were braced up on the starboard tack, her foretopmast remaining standing. She passed on toward the eastward.

Eighteenth. Meanwhile the Adriatic's engines were stopped at 2.53, and at 2.54 moved ahead slowly. The strange ship reached a point nearly abeam of the Adriatic, still showing a green light, and about 3 a. m. disappeared in the darkness, at a distance of not less than half a mile.

Nineteenth. Almost immediately afterwards voices were heard in the water, not over 500 feet from the Adriatic. She was at once stopped, and two boats were sent out. They failed to discover any one, and at 4.30 a. m., as the wind was increasing and the weather becoming thicker, the steamer proceeded on her voyage.

Twentieth. A fore and aft vessel could sail within five points of the wind, and a square-rigged vessel within six or seven points of the wind.

Twenty-first. The direction of the wind and the speed of the sailing vessel could not be determined with accuracy by those in charge of the Adriatic. Her rig could not be determined until about a minute before the collision.

653 Twenty-second. The lights of the Adriatic conformed in all respects to the requirements of the rules for preventing collisions prescribed by the Revised Statutes of the United States, and were properly set and brightly burning.

Twenty-third. The Adriatic had a good and sufficient lookout.

Twenty-fourth. The changes in the lights of the sailing vessel were not caused by her yawing, but by changes of course on her part.

Twenty-fifth. When the sailing vessel first changed her course the Adriatic slackened her speed.

Twenty-sixth. When the sailing vessel changed her course a second time, and the two vessels were, in consequence of this, proceeding in such directions as to involve risk of collision, the Adriatic stopped and reversed.

Twenty-seventh. The Adriatic did all in her power to keep out of the way of the sailing vessel.

Twenty-eighth. The Adriatic did not come in contact with the hull of the sailing vessel.

The appellee requests the court to find—

AS MATTER OF LAW:

First. The sailing vessel was bound to keep her course.
Second. She was in fault for not keeping her course.
Third. The collision was caused by the fault of the sailing vessel.
Fourth. The collision was not caused by the fault of the Adriatic.
Fifth. The decree of the district court should be affirmed, with costs.

McDANIEL, LUMMIS & SOUTHER,
*Proctors for Appellees.*

654 Circuit court of the United States for the southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants & appellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &c., whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent.

The libellants in the above-entitled action except as follows to the conclusion of law filed in the said action in the office of the clerk of the circuit court of the United States for the southern district of New York on the 3d day of October, 1879, by Chief Justice Waite, sitting as circuit justice in the said district, and to the refusal of the said Chief Jus-
655 tice, sitting as aforesaid, to make certain findings of fact and to draw certain conclusions of law submitted and proposed by the libellants:

First. The libellants except to the conclusion of law filed as aforesaid that upon the facts as found by the said Chief Justice the Adriatic does not appear to have been in fault.

Second. They except to the refusal of the said Chief Justice to find as facts that the Harvest Queen was well manned and officered, and was tight and staunch, and had her light properly set and brightly burning, though requested so to do by the libellants, and the same being fully established by the testimony submitted upon the trial.

Third. They except to the refusal of the said Chief Justice to
656 find as a fact that the first officer of the Adriatic, Bence, who was directing her movements, was inattentive and negligent in the discharge of his duties, and incompetent to perform them, though requested

so to do by the libellants, and the same being fully established by the testimony submitted upon the trial.

Fourth. They except to the refusal of the said Chief Justice to find as a fact that after the collision the master of the Adriatic did not stay by the Harvest Queen to render to her and her officers and crew such assistance as was practicable and necessary to save them from danger caused by the collision, though requested so to do by the libellants, and the same being fully established by the testimony submitted upon the trial.

657 Fifth. They except to the refusal of the said Chief Justice to find as a fact that the master of the Adriatic did not give to the master or person in charge of the Harvest Queen the name of his own vessel and her port of registry and the names of the ports to and from which she was bound, though requested so to do by the libellants, and the same being fully established by the testimony submitted upon the trial.

Sixth. They except to the request of the said Chief Justice to find as a conclusion of law that the Adriatic, in proceeding at so high a rate of speed, with the weather and the sea as they were the night of the collision, was guilty of negligence which contributed to the collision, though requested so to do by the libellants.

658 Seventh. They except to the refusal of the said Chief Justice to find as a conclusion of law that the Adriatic, in proceeding on her voyage with her lookouts stationed as they were the night of the collision, was guilty of negligence which contributed to the collision, although requested so to do by the libellants.

Eighth. They except to the refusal of the said Chief Justice to find as a conclusion of law that the Adriatic, being under steam, was bound to keep out of the way of the Harvest Queen, she being under sail alone, and in not performing her duty in this respect was guilty of negligence, which caused the collision, although requested so to do by the libellants.

New York, October 13th, 1879.

BUTLER, STILLMAN & HUBBARD,
*Proctors for Libellants and Appellants.*

659 (Endorsed:) Circuit court of the United States, southern district of New York. Charles H. Marshall, Charles Lamson, William H. Webb, and others, libellants and appellants, against The Steamship Adriatic, her engines, &c., &c., whereof the Oceanic Steam Navigation Company (limited) is claimant. Exceptions filed on behalf of libellants. Butler, Stillman & Hubbard, proctors for libellants, 111 Broadway, New York. U. S. circuit court. Filed Oct. 14th, 1879. John I. Davenport, clerk.

660 Circuit court of the United States for the southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent.

The libellants in the above entitled action except further to the find-

ings of fact and conclusions of law filed in the said action in the office of the clerk of the circuit court of the United States for the southern district of New York on the 3rd day of October, 1879, by Chief Justice Waite, sitting as circuit justice in the said district, and to the refusal of the said Chief Justice, sitting as aforesaid, to make certain findings of fact and to draw certain conclusions of law submitted and proposed by the libellants:

First. They except to the refusal of the said Chief Justice to find as a conclusion of law that the decree of the district court in the said action should be reversed, and a decree entered in favor of the libellants, and against the steamship and her claimant, for the loss sustained by them, with costs, although requested so to do by the libellants.

New York, October 16th, 1879.

BUTLER, STILLMAN & HUBBARD,
*Proctors for Libellants and Appellants.*

661 (Indorsed:) Circuit court of the United States, southern district of New York. Charles H. Marshall, Charles Lamson, William H. Webb, and others, libellants & appellants, against The Steamship Adriatic, her engines, &c. Further exceptions filed by the libellants. Butler, Stillman & Hubbard, proctors for libellants, 111 Broadway, New York. U. S. circuit court. Filed Oct. 16, 1879. John I. Davenport, clerk.

662 Circuit court of the United States for the southern district of New York, second circuit.

CHALES H. MARSHALL, CHARLES LAMSON, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson, Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Carey, Daniel S. Appleton, as executor of the last will and testament of Malvina W. Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, credits, and effects of John Lamson, deceased, and John H. Cooley, Julia W. Lewis, Mary M. Griffing, and Elizabeth H. Carter, libellants and appellants,

*against*

THE STEAMSHIP ADRIATIC, HER ENGINES, TACKLE, apparel, and furniture, whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent.

BILL OF EXCEPTIONS.

The above entitled cause came on for trial in the city of New York, before the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, sitting as circuit justice in the second circuit, for the southern district of New York, on the twenty-sixth day of May, in the year of our Lord 1879, on the appeal of the libellants above named from a certain final decree, and from each and every prat thereof,

663 made and entered in the said cause, on the tenth day of May, 1877, in the district court of the United States for the southern district of New York, dismissing in that court the libel of the libellants above named against the said steamship Adriatic, and awarding costs to the claimant of the said steamship against the said libellants to the amount of one thousand three hundred and seventy-five dollars and ninety-six cents.

The counsel for the libellants read the libel of the libellants, and the counsel for the claimant and respondent read the answer filed on its behalf, as the same are contained in the apost*h*e, or record of proceedings in the said cause, transmitted from the said district court to the said circuit court.

The counsel for the libellants, to maintain the issues on their behalf, then read the depositions of Ashley R. Westcott, William Hamilton, Richard Henwood, George Henshaw, Matthew Brown, Charles Chester, John Rathay, Charles Harmer, Henry H. Bradshaw, John Walsh, Robert Silk, William Barson, James H. Spencer, Charles Hutchinson, James D. McKay, Michael Ahern, John M. Gladstone, Robert Cunningham, Thomas McCarthy and John H. Allen, and the testimony of John S. Crotty, Charles Lamson, Gustavus S. D. Trask, James H. Spencer, Christian Metzgar, John Godbey, James H. Spencer and Charles M. Lamson, as the same were presented in the district court and as they are found in the said apost*h*e transmitted from the said district court to the said circuit court, the counsel for the libellants reading the direct examination of the witnesses above named, and the

664 counsel for the respondents reading the cross-examination of the said witnesses; the counsel for the libellants also putting in evidence certain diagrams and exhibits annexed to the said depositions and testimony, and, as proof of ownership of the ship Harvest Queen, the register of the said ship, and a bill of sale from one Waite to Charles H. Marshall and other libellants, and copies of official reports of the signal service bureau of Great Britain, from December 29th, 1875, to January 12th, 1876, and also a piece of the breast-hook alleged to be of the Harvest Queen, a piece of a towing-chock alleged to be of the Harvest Queen, a piece of a name-board and an oar, both alleged to be of the Harvest Queen. And the counsel for the claimant and respondent, to maintain the issues on its behalf, read the depositions of Charles H. Marshall, Charles Lamson, and William H. Webb, taken upon interrogatories, and the depositions of John W. Jennings, Robert E. Bence, Richard Williams, Alexander Tebak, Andrew G. Wilson, Thomas Williams, Edward Whitehurst, John Kitchen, Edward Williams, Alexander Spears, Robert McFarlane, Alexander McGachan, James O. Bradford, Robert Eccleston, Isaac McGinniss, John Barber, George McMullin, William Hughes, Thomas Crellirs, Arthur S. Ramage, George Herriott, Charles Touzel, John F. Light, Edward C. Wheeler, and James M. Cawkitt, and the testimony of Walker L. Kane, James B. Fisher, John W. Jennings, Seth G. Porter, William Hutton, Abraham McGinniss, and William

665 H. Thompson, as the same were presented in the district court, and as they are found in the said apostles transmitted from the said district court to the said circuit court, the counsel for the claimant and respondent reading the direct examination of the witnesses above named, and the counsel for the libellants reading the cross-examination

of the said witnesses, and the counsel for the claimant and respondent also putting in evidence certain diagrams and exhibits annexed to the said depositions and testimony, and the scrap log and the official log kept on the Adriatic, and the scrap log and official log kept in the engine room of the Adriatic, and certain blocks and tackle alleged to be from the boats of the Adriatic.

And then argument was made by the respective counsel on behalf of the libellants and on behalf of the claimant and respondent.

And thereafter, and on the third day of October, 1879, the said chief justice, having taken time to deliberate, filed in the office of the clerk of the said circuit court, the following findings of fact and conclusion of law, made and signed by the said chief justice, to wit:

666 Circuit court of the United States, southern district of New York.

CHARLES H. MARSHALL AND OTHERS
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C.

*Facts found by the court.*

1. During the forenoon of December 30, 1875, the ship Harvest Queen, on a voyage from San Francisco, touched at Queenstown, Ireland, for orders. She was 187 feet long, 42.6 broad, 28.6 deep, and of 1,626 tons burthen, American measurement. She had on board 1,750 tons of grain in bulk. Both vessel and cargo were owned by the libellants. Drawings of the vessel are hereto annexed and made part of this finding. Her jib-boom was 31.6 feet long and 16.5 inches in diameter; the bowsprit extended from the stem forward 33.6 feet, and from its heel to the stem was 12 feet; the size at the stem was 32 by 33½ inches; on top of the bow and over the bowsprit was a breast hook of oak about 20 feet long and 16 inches thick,
667 extending each way from the stem about 10 feet; a stick of timber from 28 to 32 inches square was required to make it. It was firmly bolted to the frame; above this was the forecastle rail.

2. Having received orders to go to Liverpool, the ship was towed out of the harbor by a tug and left, about half-past eight in the evening, four or five miles SSE. of Roche's Point, headed on her voyage. The wind at the time was blowing a fresh breeze from the southwest. The tide was ebb and running to the westward.

3. The usual route for vessels bound from Queenstown to Liverpool was past Tuskar light off the southeastern extremity of Ireland. The proper course for a sailing vessel, from the point where the Harvest Queen was left, would be E. by S.; but to make that course under the circumstances of wind and sea which prevailed that night, it would be necessary to steer somewhat more to the southward.

4. The Harvest Queen could not sail closer to the wind than seven points, and with the wind as it then was, she was capable of making eight or nine knots an hour.

5. The Adriatic was an iron steamer, running regularly between Liverpool and New York in the White Star Line. She was 450 feet long, 42 broad, and 30 or 32 deep, with no bowsprit and a very sharp bow. She left Liverpool on one of her regular voyages at noon of December 30, 1875,

and was in all respects tight, staunch, and strong, and properly officered, manned, and equipped. She passed Tuskar light a quarter of an hour after midnight, and the Saltees or Coningbeg light-ship, four or five miles away, at 1.55 a. m. of the 31st.

6. The captain, after passing the light-ship, put her on a course W. ¼ N., which was somewhat further away from the Irish coast than usual,
668 as he was not to stop at Queenstown. At 2.15 a. m. he went into the chart-room and lay down on a sofa, without taking off his clothes. He had been on duty all the time after leaving Liverpool, and when he went away gave orders to be called at four o'clock, or sooner if any vessels were seen. The chart-room adjoins and opens out of the wheel-house. The first officer was then on watch. He stood on the bridge, and most of the time on the starboard side. Three seamen were on the look-out, two stationed, one on each side of the No. 3 house, and the other on the port side of the bridge. The third officer was on the saloon deck, where he could pass orders from the bridge to the wheel; one of the quartermasters was at the wheel, and another in the wheel-house with him.

7. The forward deck was roofed with what is called, from its shape, the turtleback or whaleback. No. 3 house was just abaft this turtleback. It was one hundred and thirty feet from the stem, and both the turtleback and the saloon deck were reached from it by bridges. The spray dashed over the turtleback, so that the lookouts could not have seen ahead at all times, if they had been stationed there. For this reason they were put on the house. The bridge was one hundred and seventy-five feet from the stem.

8. At 2.35 a. m. the first officer, from his place on the bridge, and looking through a night-glass, saw a green light about two points on his starboard bow. It was so far away that it could not be seen with the naked eye. The steamer was then about fifty-two miles to the eastward of Roche's Point, and fifteen miles SSE. of the Hook Tower Light; both Coningbeg and the Hook Tower lights could be seen from where she was. The wind was from SW. to S. SW., blowing a fresh gale, and with a force indicated by the figures 7 or 8 on the Beaufort scale, which is as follows:

BEAUFORT SCALE.—WIND AND WEATHER.

0. Calm.
1. Light air, just perceptible.
2. Light breeze, ship going from one to two knots.
669 3. Gentle breeze; from two to four.
4. Moderate; four to six.
5. Fresh; when royals can be carried.
6. Strong breeze; first reef and top-gallant sails.
7. Moderate gale; double reefs, top sails.
8. Fresh gales; treble-reefed top sails and courses.
9. Strong gale; close reefs.
10. Whole gale; close-reefed main top sails.
11. Storm; storm stay sails.
12. Hurricane; no canvas.
B. Blue sky.
C. Detached clouds.

D. Drizzling rain.
F. Fog.
G. Dark, gloomy.
H. Hail.
L. Lightning.
M. Misty, hazy.
O. Overcast.
P. Passing showers.
Q. Squally.
R. Rain.
S. Snow.
T. Thunder.
U. Ugly, threatening.
V. Visibility.
W. Wet, clear.

Barometer:
R. Rising.
F. Falling.
S. Steady.

The night was dark on the water, but the sky was clear, with detached clouds. The sea was high, and running strong from the southward. The steamer was going about twelve knots an hour, which was as fast as she could be driven under the existing conditions of wind and sea.

9. She had all her regulation lights in their proper places, and brightly burning. None of her sails were set, and she was propelled exclusively by steam.

670 10. When the first officer discovered the green light he had no means of telling what kind of a sailing vessel it was on, or what her exact course was. He did not change his course, but called the third officer to the bridge, who also looked at the light through the glass. Not long afterwards a light bearing in about the same direction was seen by the starboard lookout on the No. 3 house. He sent the other lookout, stationed with him on the house, to give two strokes of the bell placed on the turtle-back for signal purposes. This was promptly done, and signified that there was a light ahead off the starboard bow. It gave no indication of the color of the light.

11. At 2.39 a. m. the green light which had broadened to three and a half points on the starboard bow, or possibly something less, changed to red. The first officer thereupon ordered the wheel to port, and telegraphed the engineer to "stand by," following this at once with a further order to "slow." All these orders were promptly obeyed, and under the influence of her port helm the steamer swung slowly to starboard.

12. About a minute afterwards the red light changed to green. By this time the bow of the steamer had gone off about a point to starboard, and was swinging more and more in that direction under the continued port helm. As soon as the green light reappeared the first officer gave an order to stop the engine, and then as soon as it could be done, to back at full speed. These orders were all obeyed, and the engine put under reverse motion at or about 2.41. No change of the wheel was then made, but the first officer directed that the captain be called, and this was done.

13. The captain, when he was called, came out of the chart-room into

the wheel-house, and as he passed to the deck on the starboard side, noticed by the indicator that the wheel was to port. When he got on deck the engine was under reverse action, and this he detected. Looking ahead he saw a green light not very far away—about two points off the star-
671 board bow. Then green and red lights appeared together, and then the red alone. Without any consultation with the first officer he gave the order from the deck, "hard a-starboard," and went on the bridge. This order was obeyed. In going astern the effect of a starboard helm is the same as that of a port helm when going ahead. It swings the bow to starboard.

14. Very soon after the captain got on the bridge the Harvest Queen appeared through the darkness; she was apparently under as much sail as she could carry, and headed for the Adriatic. Before anything further could be done on the steamer to avoid a collision, the jib boom of the Harvest Queen ran over the turtleback, and was in some way broken so that it fell down over the side of the steamer. The Adriatic's engines were at the time backing at full speed, and if the vessel herself was not actually under sternway she was not going ahead much, if any. She kept on backing, and when the vessels got separated, as they soon did, a part of the ship's outer jib and its blocks and rigging were found on the turtleback, and hanging over the port rail. The fish davits were made of round iron six and a quarter inches through where they leave the turtleback, and bent upwards like a bow. At the time of the collision they were arranged forward along the side of the vessel. The anchor stocks were of iron inches through. There were light iron guard rails around the turtleback. After the collision the port fish davit was found bent downwards towards the deck seventeen inches or thereabouts; the port anchor stock broken and hanging by the lashings, and the guard rails on both sides bent and some of the stanchions broken. The point on the bow was somewhat chafed and scratched, but not very much. The bent fish davit was thirty-seven feet from the stem, and the bent and broken rails about twenty-eight feet. The broken anchor stock was a short distance forward of the fish davit. No other injury was done to the Adriatic. The shock of the collision was scarcely perceptible abaft the foremast.

15. There was no hail from the Harvest Queen, but just after the collision the first officer of the Adriatic hailed her once from the turtleback. No answer was heard.

672 16. The Adriatic continued backing until 2.53 a. m., when her engines were stopped. After the vessels separated the Harvest Queen passed across the bow of the steamer from port to starboard. Her masts appeared to be all standing and the sails upon them set, but in some way she was injured by the collision so that she sank not long after with all on board, and became a total loss. Nothing has since been heard of her or any of her crew; when last seen she was apparently a half a mile away from the steamer, and showing her green light four or five points off the starboard bow.

17. Immediately after the vessels got separated, orders were given on the Adriatic to clear way the boats, and the men at once set to work to do so, but the Harvest Queen still keeping in sight the order was countermanded for the moment. The Adriatic then steamed slowly towards the Harvest Queen, until she became lost to view. About the time she dis-

appeared cries for help were heard in the water, off in the direction of where she was last seen. The orders to lower the boats were then promptly repeated, and two boats put out. Some confusion occurred in getting the boats away, as the crew had not been assigned to them, the steamer having only just left port. There was no unreasonable delay, however. The boats were put in command of the second and fourth officers, and rowed in the direction of where the voices came from, and where the ship was last seen; they remained out from half an hour to an hour when they were recalled by a signal from the steamer. Nothing was found except a piece of timber, supposed at the time to be a part of the broken jib-boom, and a piece of rope. At 4.30 a. m. the Adriatic again started on her voyage.

18. The movements of the engine after it was stopped at 2.53 were thus recorded in the engineer's log.

2.54 a., m. ahead slow.
3.00 " stop.
3.15 " astern slow.
3.16 " stop.
673 3.23 a. m., astern slow.
3.26 " stop.
3.45 " ahead slow.
4.00 " stop.
4.09 " astern slow.
4.11 " stop.
4.15 " astern slow.
4.16 " stop.
4.26 " ahead slow.
4.30 " ahead full speed.

19. When the green light was first seen from the Adriatic it is not probable the Harvest Queen was where she could see the Coningbeg light-ship. She must have just then been coming within the range of that light which is placed some miles outside of the land. It is at the south-eastern extremity of a series of dangerous rocks extending out a considerable distance from the land known as the Saltees Rocks.

20. On the 12th of January, 1876, a piece of the port side of the breast hook of the Harvest Queen, seven feet and ten inches long, and a piece of the starboard forecastle rail extending from the cathead forward to the towing chock, were found cast ashore about a mile and a half west of Carnsore Point, which is on the coast of Ireland, about midway between Tuskar and Coningbeg. Near the same place were also found a small piece of the name-board of the Harvest Queen and part of an oar with her name on it. No other parts of the wreck have ever been found. The place at which these articles were found, was where the wreckage would naturally have drifted if the Harvest Queen went down in the neighborhood of where the collision occurred. The breast hook was broken square off, apparently about eighteen inches or two feet from the stem. The piece found was torn from the frame to which it had been bolted, in such a manner as to leave the bolts standing in their original position, only a
674 few being bent and none drawn out. The name-board was of light pine, not more than two or three feet long and a foot wide.

CONCLUSION OF LAW.

Upon the facts as found the Adriatic does not appear to have been in fault.

WAITE, *Ch. J.*

(Here follows diagram marked page 675.)

675½ And at the same time the said circuit justice filed in the office of the clerk of the said circuit court an opinion, in writing, of which the following is a copy, to wit:

676 Circuit court of the United States, southern district of New York.

CHARLES H. MARSHALL AND OTHERS
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., &C.

*Opinion.*

Many of the facts disputed below have not been questioned here. The claimant does not deny that the vessels actually collided or that the Harvest Queen sank, with all on board, in consequence of injuries received in the collision. The libellants also concede that if the Adriatic was not in fact going astern when the collision took place she was making little or no headway. These questions are, therefore, out of the way, and the controversy about the facts is reduced to the color of the light first seen by the Adriatic, its distance, the time it appeared, the changes in color and bearing, and the movements of the Adriatic.

It would not be easy to solve all these questions satisfactorily if the evidence was considered only in parts. Taking it as a whole, however, I have had no great difficulty in reaching the conclusions stated in the find-
677 ings of facts. The recollection of witnesses as to time, distances, and bearings cannot be relied on in all cases with implicit confidence. It is at best but the impressions of what the judgment of the witness was about a matter of which no special note was made at the time. In but few instances is it claimed that the time was actually taken from a time-keeper or the bearing by a compass. It is easy to see that such impressions would be more or less influenced by what afterwards happened.

1. As to the time, all agree that no one saw the light until after five bells, or half past two. It was seen by the first and second officers on the bridge before it was by the lookouts. The officers put the time at 2.35, so recording it in the log, and I see no reason to doubt the accuracy of their estimate or recollection. No witness directly contradicts them, and they are strongly supported by what is known to have taken place afterwards. At any rate they cannot be far from the truth. The engineer's log shows that the engine was first stopped, after backing, at 2.53. This was after the collision. It is the duty of the engineer, or his assistant, to make a record of every change in the movement of the engine and the time when it occurred. Entries are made at the very time the changes take place, with chalk, on a black-board kept near at hand for that purpose, and the time is taken from a clock hung where it can conveniently

if at 2.39 they were a mile and a half a part it would take them six minutes, and probably a little more, to get together.

The Adriatic stopped backing at 2.53. She was then supposed to be about half a mile from the place of collision. Her maximum speed in backing did not exceed seven miles an hour. Her average speed in getting up this maximum, after she had stopped going ahead, would, consequently, be three miles and a half an hour if there were no obstructions in the way. But we know that in addition to getting up her own stern-way she had to separate herself from the Harvest Queen almost entirely by the use of her own power, since the effect of the wind was to keep the two vessels together till they got free of each other. I think it fair to assume, therefore, that the steamer continued backing seven or eight minutes after the collision. In this time she would have gone about half a mile.

681 In view of these facts I have had no difficulty in reaching the conclusion that the wheel of the Adriatic was ported at 2.39, and that the collision occurred from 2.45 to 2.47. The first officer says that when the green light appeared the second time he telegraphed to "stop," and followed this order as soon as possible with another to back at full speed.

The engineer's log shows that the order to stop came at 2.40 and the one to back at 2.41. Time in seconds is not put on the log, and from entries of this kind it may fairly be inferred that one order followed close on the other. Some discussion was had at the bar in this connection as to the time the captain was called, and how soon he came on deck, but to my mind these questions are unimportant so far as this branch of the case is concerned.

It only remains to consider under this head what changes were made in the course of the Adriatic. At 2.39 the wheel was ported, and at the same time the engine was slowed. At 2.40 the engine was stopped, and at 2.41 put at full speed under the reverse motion. The steamer could not, therefore, have run more than two minutes under her port helm before her screw began to turn backwards. In two minutes, at her full speed of twelve miles an hour, she would not have gone but two-fifths of a mile, and under the "slow" it is not probable she made much, if any more, than a quarter of a mile. The estimate of the witnesses is that when the orders to stop and go astern were given she had not swung more than a point or a point and a half. This being so, her departure from her original course could not then have been very great, and when the screw was reversed the rudder had but little effect until stern-way was acquired. Under these circumstances I cannot think that when the collision took place the steamer had gone more than two or three points off her course. Very little dependence can be put on the recollection of the officers or men as to the exact heading of their vessel. They were men in a position which made it more important to look at the way they were to get out of the danger that threatened them than to the exact angle of their course.

Without more as to the particular facts, I proceed to the consideration of what seems to me to be the real controversy in the case, and that is, whether, as a matter of law, the Adriatic was in fault for porting, stopping, or backing, or for starboarding on the order of the captain when he came on deck. There is now no doubt that if she had kept her

682 course and speed, and the Harvest Queen had done what she in fact did do, there would have been no collision. It was a mistake, therefore, to change, but every mistake is not necessarily a fault in admiralty.

The law requires that those in charge of the navigation of vessels like the Adriatic should possess a very high degree of nautical skill. They are charged with the important duty of directing the movements of the powerful machinery placed under their control, so as not unnecessarily to endanger life or property either on board or not on board. For this purpose they are required to exercise good judgment. They need not be infallible. It is enough if they do what others, having the requisite skill and placed in a like situation, would ordinarily have done.

The conduct of those on the Adriatic must be considered in connection with the facts as they successively presented themselves at the time. And first in order was the green light seen a point and a half or two points on the starboard bow, two miles and a half or three miles away to the leeward. The wind was from the southward and westward, accompanied by a driving sea from the same direction. So long as that light alone was in view in that quarter it was safe for the steamer to keep her course and speed, and no one could complain if she did. The highest skill would not be likely to suggest anything different. Next the green light was changed to red, and thus the green of the steamer exposed to the red of another vessel not a very great way off. At this time nothing but a light was seen. Neither the ship nor her sails had appeared. It was only known for a certainty that a red light was on the water, well off the starboard bow of the steamer, between her and a dangerous lee shore, and that it was probably carried on some kind of a sailing vessel, as no white light accompanied the red. What course the vessel was steering could not then be told with exactness. It was under such circumstances that the first officer was called on to decide whether he would attempt to cross in front of the light at full speed without porting, or whether he would port and slow or do either alone. I am aware that it is not every case of meeting port to starboard that will justify a port wheel to put port to port. The rule is for one vessel not to cross the bow of another at a dangerous proximity, and it is just as wrong to knowingly do this by

683 porting as it is by starboarding. Here, however, there was uncertainty. A light only was seen. It might be on a vessel beating down the channel or on one coming up. The vessel might be one that could sail close to the wind or another that was obliged to keep more away. On a steamer going at the rate of twelve miles an hour against or across the wind it is not always easy to tell the exact direction from which the wind is blowing. Practice will undoubtedly enable some to make estimates that will approximate the truth, but it will not always do to venture on nice calculations without more accurate observations than can generally be made under such circumstances.

The appearance of the red light in the place of the green indicated clearly that the vessel on which it was displayed occupied a different position towards the steamer from what she did before, and that in some way the courses of the two vessels were changed, so that they crossed ahead of where the steamer then was. How far ahead was uncertain. Under these circumstances it was that the officer in command deemed it prudent to put his

wheel to port, so as to bring his red light opposite the same light of the approaching vessel, and, as there was doubt, to bring his vessel under better control in case of an emergency by reducing her speed. It is now probable that if the ship could have been seen and her exact position made out neither of these things would have been done; but the question here is not what, with the knowledge we now have, ought to have been done, but what, with the facts as they then appeared, ordinary prudence would suggest.

It needs no argument to show that a speed of twelve miles an hour with a vessel weighing, as the Adriatic did, 8,000 tons would under some circumstances be dangerous.

The natural impulse of a skil'ful navigator, if in doubt as to what was before him, would be to reduce this speed, so as to get his ship under better control while the uncertainty continued. So, too, a red light exposed to a green is more likely to be unsafe than a red to red, and where reasonable doubt exists as to the relative position of the two vessels, instinctively, almost, those in command endeavor to bring the two red lights together as the appropriate way of avoiding all danger. It has, however, been argued with much force that if the red light was first seen a mile and a half away, three points and a half over the starboard bow, the Adriatic ought
684 to have known that, with the wind as it was, she would cross the course of the approaching vessel long before there could be any danger of collision, and that to attempt to pass otherwise was a clear fault. I have very great doubt whether, when the red light appeared, it was as far over the bow as seems now to be supposed, but, be that as it may, the exact position of the ship could not be seen, and I do not think such a mistake as may have been made, ought, under the circumstances, to be visited with the consequences of a legal fault. The change of the green light to red was calculated to induce the belief that the ship on which it was carried had changed her course, and I am by no means satisfied from the evidence that she did not do so. As the case stands, it now seems to me probable that if the ship had kept her course with that light in view, there would have been no collision. Soon, however, the red light went out, and the green again appeared, still without ship or sails in sight to aid in determining what ought to be done. This added to the original uncertainty, and clearly made a case apparently for the application of the rule which requires a steamer in doubt to get away from apprehended danger. To go ahead would look like approaching the peril, while to back would seem to be withdrawing from it. A change of helm at that time was not specially important, because, before it could be made of any practical use, the screw would be under its reverse motion, and then the rudder could have but little effect until the momentum was overcome and stern-way obtained. When that was done the port wheel would have the same effect on the swing of the bow as a change to starboard would have in going ahead. If the witnesses are to be believed, the course of the ship appeared to be unsteady, and that being so, it is hard to say that backing away from her was a fault. In the darkness which then prevailed that would seem to be the safest thing that could be done.

Complaint is made of the captain because after coming on deck he ordered the wheel to starboard without consulting the first officer. The captain says he gave the order when he saw the ~~red~~ green light change to ~~green~~ red, and when, as he supposed, the steamer was under stern-way. I am satisfied,

however, that the forward motion had not then been overcome. The engine was working astern and throwing the "white water" forward, but the steamer herself was still going ahead. If she had been going astern, the order would have been right, for the starboard wheel in backing would bring the bow to starboard, and thus assist in putting the vessels on parallel courses with their green lights opposite each other. As long as she was going ahead slowly it made but little difference which way the rudder was, since the backward movement of the screw prevented the operation of the rudder to any considerable extent. The order, therefore, would not have contributed to the collision, and did no harm. It is again insisted that the Adriatic was in fault for delay in getting out her boats, and for not waiting until daylight before starting on her voyage. The order to clear away the boats all agree was given with promptness, and I cannot find that there was any culpable delay in getting them out. Before they could be lowered the steamer was half a mile away from the place of collision and from the ship. It was certainly good judgment to wait until the steamer could be got nearer before putting the boats in the water, and it is not seriously contended that when the order was given the second time it was not obeyed with all the promptness that ought to have been expected. The engineer's log, the correctness of which I do not doubt, shows conclusively that the steamer was lying by and moving cautiously about in the vicinity of where the accident occurred for much more than an hour. The gale was all the time increasing, and the lee shore not far away was dangerous. The official report of the weather shows that the next morning at 8 o'clock the wind was blowing a strong gale at Tuskar, the nearest signal station. The ship must have gone down before morning, and probably while the steamer was lying by. If the ship's boats had been got out there can hardly be a doubt they would have reached the steamer, lighted as she was from the masthead. If they were not out, it is probable there was nothing left on the surface of the water to save after the voices which had been heard were lost, and this must have been considerably more than an hour before the steamer left. In the mean time the steamer's, boats had been out for nearly an hour, and diligent in their efforts to do all that could be done. While, therefore, it would have been more satisfactory if the steamer had staid by longer, I cannot say she was in fault for not doing so. The probability is that nothing more could have been done if she had held on, and she owed her first duty to those she had on board.

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Complaint is also made of the unsatisfactory account of the collision given in the logs, of the painting over of the scratches on the bow in New York, and of the reticence of the officers of the steamer on her arrival. All these furnish just cause for criticism, but I cannot say they overcome the effect of the other facts, which to my mind have been satisfactorily established in spite of them.

My attention has also been called to some supposed discrepancies in the cases made by the logs, the answers, and by the testimony given on the defence. I have failed to find any such substantial differences as to cast suspicion on the testimony. The difficulty with me has been, not so much as to the facts, as to the duty of the Adriatic in connection with the facts I have found.

The case has been presented in the most satisfactory manner on both sides. Nothing has apparently been left undone by counsel or parties that they could do to aid me in the determination of the facts, or of the law; and after the careful consideration which such laborious preparation deserves, I have been unable to reach any other conclusion than that the fault of the Adriatic has not been shown. A steamer is not justified in coming into collision with any other vessel if it is possible to avoid it, that is to say, if it can be avoided by the use of such means as those having the requisite skill would ordinarily employ for that purpose under like circumstances. I cannot but think the officers of this steamer have brought their justification within the fair operation of this rule.

Much of what was done at the time of this disastrous collision will never be known. It is impossible to tell with certainty how the vessels came together. The ship came and went in a comparatively short time, and necessarily in the midst of great excitement. Almost every witness has his own peculiar theory. Hardly any two of the large number of diagrams in the record, representing what the observers think they saw, agree in the material points, and it would be a useless task to attempt now to ascertain just how the damage was done. It seems almost incredible that so large and apparently so strong a ship could be broken into and sunk in so short a time without inflicting serious injury on the
687 Adriatic. As it was, the iron plating was hardly touched. Not a single indentation has been found which can fairly be attributed to an actual contact with the hull of the ship. The scratches in the paint must have been very slight, and it is by no means certain, from the testimony, that any were found on the stem or the starboard side of the bow. There is certainly no satisfactory evidence shown that the sharp bow of the Adriatic went any considerable distance inside the hull of the ship. As the Adriatic was stopped, or nearly so, it is evident that the blow which caused the loss must somehow have come from the Harvest Queen herself. It is a very remarkable fact, under the circumstances which are known to have existed, that no hail was heard from the deck of the ship before or after the collision. This seems entirely inconsistent with the idea that she could have had her proper complement of men standing watch and attending to their duties at the time. Confessedly a considerable time elapsed between the collision and the final disappearing of the ship, enough certainly to have given an opportunity to lower away her boats, if her crew had been at their posts. But it is not my intention to look for the faults of the ship. I place the decision entirely on the grounds that, upon the case as it stands, the steamer is free fron
decree may be prepared dismissing the libel, with costs in
688 And then the counsel for the ~~claimant~~ 1 and ~~respondent~~ 2
to and filed with the said Chief Justice, sitting as circu
aforesaid, the following proposed conclusions of law upon the fac
with the request that he should make and file the conclusions of law submitted as aforesaid:

689 CONCLUSIONS OF LAW.

First. The Adriatic, in proceeding at so high a rate of speed with the weather and the sea as they were the night of the collision, was guilty of negligence, whch contributed to the collision.

Second. The Adriatic, in proceeding on her voyage with her lookouts stationed as they were the night of the collision, was guilty of negligence, which contributed to the collision.

Third. The Adriatic, being under steam, was bound to keep out of the way of the Harvest Queen, she being under sail alone; and in not performing her duty in this respect, was guilty of negligence, which caused the collision.

Fourth. The Harvest Queen was not guilty of any negligence which contributed to the collision.

690 Fifth. The decree of the district court herein should be reversed and a decree entered in favor of the libellants and against the steamship and her claimants for the loss sustained by them, with costs.

BUTLER, STILLMAN AND HUBBARD,
*Proctors for Libellants and Appellants.*
THOMAS E. STILLMAN, *Advocate.*

691 And thereafter, and upon notice of the filing of the said findings of fact and conclusion of law and opinion, and on his refusal to make the conclusions of law proposed on behalf of the libellants, and on the fourteenth day of October, 1879, being before the entry of any judgment or decree thereon, the libellants filed in the office of the clerk of the said circuit court, and served upon McDaniel & Souther, proctors for the Oceanic Steam Navigation Company (limited), the claimant and respondent, with notice of filing the same, the following exceptions, separately, to the conclusion of law made and filed by the said Chief Justice, and also the following exceptions separately to the refusals of the said Chief Justice to make conclusions of law submitted and proposed to him on behalf of the libellants, and which the libellants requested him to make.

692 Circuit court of the United States for the southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &c., whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent.

The libellants in the above-entitled action except as follows to the conclusion of law filed in the said action in the office of the clerk of the circuit court of the United States for the southern district of New York, on the 3d day of October, 1879, by Chief Justice Waite, sitting as circuit justice in the said district, and to the refusal of the said Chief Justice, sitting as aforesaid, to make certain conclusions of law submitted and proposed by the libellants:

First. The libellants except to the conclusion of law, filed as aforesaid, that upon the facts as found by the said Chief Justice the Adriatic does not appear to have been in fault.

Second. They except to the refusal of the said Chief Justice to find as a conclusion of law that the Adriatic in proceeding at so high a

692½ rate of speed, with the weather and the sea as they were the night of the collision, was guilty of negligence which contributed to the collision, though requested so to do by the libellants.

Third. They except to the refusal of the said Chief Justice to find as a conclusion of law that the Adriatic, in proceeding on her voyage with her lookouts stationed as they were the night of the collision, was guilty of negligence which contributed to the collision, although requested so to do by the libellants.

Fourth. They except to the refusal of the said Chief Justice to find as a conclusion of law that the Adriatic, being under steam, was bound to keep out of the way of the Harvest Queen, she being under sail alone, and in not performing her duty in this respect was guilty of negligence which caused the collision, although requested so to do by the libellants.

Fifth. They except to the refusal of the said Chief Justice to find as a conclusion of law that the Harvest Queen was not guilty of any negligence which contributed to the collision.

Dated New York, October 13th, 1879.

BUTLER, STILLMAN, & HUBBARD,
*Proctors for Libellants and Appellants.*

693 And thereafter and on the sixteenth day of October, 1879, and still before the entry of any judgment or decree of the said circuit court, the libellants filed in the office of the clerk of the said circuit court and served upon McDaniel & Souther, proctors for the Oceanic Steam Navigation Company (limited), the claimant and respondent, with notice of filing the same, the following further exceptions to the refusal of the said Chief Justice to make a conclusion of law submitted and proposed to him on behalf of the libellants, and which the libellants requested him to make.

694 Circuit court of the United States for the southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent.

The libellants in the above-entitled action except further to the findings of fact and conclusion of law filed in the said action in the office of the clerk of the circuit court of the United States for the southern district of New York, on the 3rd day of October, 1879, by Chief Justice Waite, sitting as circuit justice in the said district, and to the refusal of the said Chief Justice, sitting as aforesaid, to make certain findings of fact, and to draw certain conclusions of law submitted and proposed by the libellants.

First. They except to the refusal of the said Chief Justice to find as a conclusion of law that the decree of the district court in the said action should be reversed and a decree entered in favor of the libellants and

against the steamship and her claimant, for the loss sustained by them, with costs, although requested so to do by the libellants.

New York, October 16th, 1879.

BUTLER, STILLMAN, & HUBBARD,
*Proctors for Libellants and Appellants.*

695 And inasmuch as the said exceptions do not appear by the record of the decree of said circuit court, the proctors for said libellants have prepared and caused this bill of exceptions, upon due notice to the proctors for the claimant to be settled as a record thereof, according to the form of the statute in such case made and provided, and the practice of the court, and to be signed and filed.

M. R. WAITE.

NOVEMBER 19, 1879.

696 (Indorsed:) Circuit court of the United States for the southern district of N. Y. Charles H. Marshall, Charles Lamson, William H. Webb, and others, libellants & appellants, against The Steamship Adriatic, her engines, &c., whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent. Bill of exceptions. Butler, Stillman & Hubbard, proctors for libellants and appellants, 111 Broadway, New York. U. S. circuit court. Filed Nov. 20, 1879. John I. Davenport, clerk.

697 At a stated term of the circuit court of the United States for the southern district of New York, held at the court-room thereof, in the city of New York, on the 15th day of October, 1879.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, holding said court.

THE STEAMSHIP ADRIATIC, HER ENGINES, tackle, &c., The Oceanic Steam Navigation Company (limited), respondents & appellees, *ads.*
CHARLES H. MARSHALL AND OTHERS, libellants & appellants.

This cause coming on to be heard on the appeal of the said libellants and appellants from the final decree of the district court of the United States for the southern district of New York, made and entered in this cause on the 10th day of May, 1877, ordering, adjudging, and decreeing that the libel filed herein in said court be dismissed with costs to

698 be taxed against the said libellants, which were thereafter duly taxed at the sum of thirteen hundred and seventy-five and $\frac{26}{100}$ dollars; and said cause on said appeal having been heard upon the pleadings and proofs in the district court and argued by the advocates of the respective parties, and due deliberation having been had in the premises:

Now, on motion of McDaniel & Souther, proctors for said respondents and appellees,

It is ordered, adjudged, and decreed that said final decree of the district court be, and the same is hereby, in all things affirmed and the libel dismissed; and that the said respondents and appellees recover against

the said libellants and appellants their said costs as taxed, and as in and by the said final decree of the district court it was provided that the said respondents and appellees should recover against the said libellants and appellants, amounting as aforesaid to the sum of thirteen hundred and seventy-five and $\frac{96}{100}$ dollars, and also the further sum of three hundred & $\frac{10}{100}$ dollars, for the costs of the said respondents and appellees upon the said appeal to this court as taxed, amounting together to the sum of sixteen hundred and seventy-six and $\frac{06}{100}$ dollars.

699 And it is further ordered, adjudged, and decreed that unless an appeal be taken from this decree within the time prescribed by law and the rules and practice of this court, that a summary judgment be entered against the said libellants and appellants and William H. Appleton and Israel Wise, the sureties upon the appeal herein, for the said sum of sixteen hundred and seventy-six $\frac{06}{100}$ dollars, with interest thereon from the date hereof.

M. R. WAITE.

We approve this decree as to form.
New York, October 15th, 1879.

BUTLER, STILLMAN & HUBBARD,
*Proctors for Libellants.*

(Endorsed:) U. S. circuit court, southern district of N. Y. In admiralty. The steamer Adriatic, &c., respondent & appellees, ads. Charles H. Marshall & others, libellants & appellants. Final decree. McDaniel & Souther, proctors for respondents & appellees, 8 & 10 Pine st., N. Y. U. S. circuit court. Filed Nov. 21, 1879. John I. Davenport, clerk.

700 *Affidavit of service.*

Circuit court of the United States, southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants & appellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., respondent.

SOUTHERN DISTRICT OF NEW YORK,
*City and County of New York, ss:*

George P. Gordel, being duly sworn, says he is clerk in the office of Butler, Stillman & Hubbard, proctors for the libellants herein; that on the 29th day of November, 1879, at number eight, Pine street, in said city, he served the annexed on McDaniel & Southen, proctors for the respondent herein. Deponent made such service by delivering a copy of the same to and leaving the same with the person in charge of the office of the respondent's proctor during business hours, and at the same time obtaining an admission in writing of such service.

GEO. P. GORDEL.

Sworn to before me this 29th day of November, 1879.
[L. S.] JAMES GOUDGE,
*Notary Public, Kings Co., N. Y.*
*Cert. filed in N. Y. Co.*

701 Circuit court of the United States, southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson, Samuel Nelson, Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Carey, Daniel S. Appleton, as executor of the last will and testament of Malvina W. Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, credits, and effects of John Lamson, deceased: John H. Cooley, Julia W. Lewis, Mary M. Griffing, and Elizabeth H. Carter, libellants and appellants,

*against*

THE STEAMSHIP ADRIATIC, HER ENGINES, boiler, tackle, apparel, and furniture, whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent.

Please take notice that the libellants in the above-entitled action appeal to the Supreme Court of the United States from the decree of the circuit court of the United States for the southern district of New York,
702 entered in said action on the 21st day of November, 1879, that the decree of the district court be affirmed, and the libel be dismissed, and that the respondent recover costs against the libellants, amounting in all to sixteen hundred and seventy-six $\frac{06}{100}$ ($1,676.06) dollars, and from each and every part of the said decree.

New York, November 29th, 1879.

BUTLER, STILLMAN & HUBBARD,
*Proctors for Libellants, Appellants.*

To JOHN I. DAVENPORT, Esq.,
*Clerk of the United States Circuit Court*
*for the Southern District of New York.*

MCDANIEL & SOUTHER,
*Proctors for Claimant, Respondent,*
*8 Pine-street, New York.*

703 (Indorsed:) Circuit court of the United States, southern district of New York. Charles H. Marshall, Charles Lamson, William H. Webb, and others, libellants and appellants, against The Steamship Adriatic, her engines, &c., whereof the Oceanic Steam Navigation Com-

pany (limited) is claimant, appellee. Notice of appeal Butler, Stillman & Hubbard, proctors for libellants, appellants, 111 Broadway, N. Y.

Service this day of within notice of appeal is hereby admitted.
New York, Nov. 29, 1879.

McDANIEL & SOUTHER,
*Proctors for C. & Resp'ts.*

U. S. circuit court. Filed Nov. 29th, 1879. John I. Davenport, clerk.

704 *Affidavit of service.*

United States circuit court, southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants, appellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &c., whereof the Oceanic Steam Navigation Company (limited) is complainant, respondent.

SOUTHERN DISTRICT OF NEW YORK,
*City and County of New York, ss:*

Chas. Henry Butler, being duly sworn, says he is clerk in the office of Butler, Stillman & Hubbard, proctors for the libellants herein; that on the 12th day of January, 1880, at number 8 & 10 Pine street, in said city, he served the annexed petition of appeal & order allowin' appeal & notice of entry on McDaniel & Souther, proctors for the claimant herein. Deponent made such service by delivering a copy of the same to and leaving the same with Michaels Phillips, one of the saidp roctors. Deponent also lodged a copy of said petition of appeal, &c., addressed to the claimant abovenamed, in the office of the clerk of the United States circuit court for the southern district of New York.

[L. S.] CHAS. HENRY BUTLER.

Sworn to before me this 12th day of January, 1880.

ADRIAN H. JOLINE,
*Notary Public, Kings Co., N. Y., with cert. in N. Y. Co.*

705 At a stated term of the circuit court of the United States for the southern district of New York, had in the United States court-room, in the city of New York, on the 22d day of December, 1879.

Present, honorable Samuel Blatchford, circuit judge.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants, & appellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, BOILers, &c., *or* whereof the Oceanic Steam Navigation Company (limited) is claimant.

On reading and filing the annexed petition of appeal of the libellants

in the above-entitled action, and on motion of Butler, Stillman & Hubbard, proctors for the libellants, it is ordered that the said appeal be, and that it is hereby, allowed to the Supreme Court of the United States.

SAM'L BLATCHFORD.

(Indorsed:) U. S. circuit court. Filed Dec. 22, 1879. John I. Davenport, clerk.

706 Circuit court of the United States, southern district of New York

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson, Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Carey, Daniel S. Appleton, as executor of the last will and testament of Malvina W. Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, credits, and effects of John Lamson, deceased; John H. Cooley, Julia W. Lewis, Mary M. Griffing, and Elizabeth H. Carter, libellants and appellants.

*against*

THE STEAMSHIP ADRIATIC, HER ENGINES, BOILERS, tackle, apparel, and furniture, whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent.

To the honrable the Supreme Court of the United States:

The appeal of Charles H. Marshall, Charles Lamson, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson,
707 Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Carey, Daniel S. Appleton, as executor of the last will and testament of Malvina W. Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, credits, and effects of John Lamson, deceased; John H. Cooley, Julia W. Lewis, Mary M. Griffing, and Elizabeth H. Carter, libellants and appellants herein respectfully shows:

That on or about the 17th day of February, 1876, the libellants and appellants above named exhibited their libel in the district court of the United States for the southern district of New York, against the above-named steamship Adriatic, her engines, boilers, tackle, apparel, and furniture, and against all persons intervening for their interest therein, claiming two hundred and twenty-five thousand dollars damages for the reasons set forth in the said libel, and praying among other things that the said steamship might be condemned and sold to pay the said damages, with costs.

That process thereupon duly issued out of said court against the said steamship Adriatic, and that thereupon the claimant and respondent

herein appeared and filed a claim to the said steamship, and a stipulation for value of the same in the amount of three hundred thousand dollars.

That thereafter, and on or about the 20th day of March, 1876, the said claimant filed its answer to the said libel in the said district court, praying among other things that the said libel be dismissed, with costs
708 to the claimant, as by reference to the said libel and the said answer may more fully appear.

That on the 5th day of January, 1877, the said cause came on to be heard before the honorable Samuel Blatchford, judge of the said district court, upon the testimony and proofs advanced by the respective parties, and the depositions and proofs taken in the said cause by them, and the said judge having advised thereon, did, on the 10th day of May, 1877, make a final decree in said cause, whereby it was, among other things, ordered, adjudged, and decreed that the libel in the said cause be thereby dismissed with costs, and that the claimant recover against the libellants the sum of thirteen hundred seventy-five dollars and ninety-six cents the amount of its costs taxed.

That thereafter, and after the said final decree of the district court, your petitioners, the appellants, duly appealed to the circuit court of the United States for the southern district of New York, in the second circuit, and the said cause was thereby removed to the said circuit court, and was there tried anew between the 26th day of May, 1879, and the 10th day of June, 1879, before the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, sitting as circuit justice in the said circuit, on the pleadings, depositions, testimony, and proofs taken in the district court, and on certain proposed findings of fact and conclusions of law submitted by the respective parties, and such proceedings were had in the said circuit court that afterwards the said chief justice filed certain findings of fact, and a certain conclusion of law, together with an
709 opinion in writing; that thereafter the libellants filed certain exceptions to the said conclusions of law, and to his refusal to make and file certain findings of fact and conclusions of law submitted and proposed by the libellants; and that afterwards the said Chief Justice granted to the libellants a certain bill of exceptions, which said bill of exceptions was filed in the office of the clerk of the circuit court of the United States for the southern district of New York; and that afterwards, and on the 21st day of November, 1879, the said circuit court made a final decree in the said cause, whereby it was adjudged and decreed that the decree of the district court be in all things affirmed, and that the libel of the libellants be dismissed, and that the claimants, the Oceanic Steam Navigation Company (limited), have and recover against the libellants the sum of thirteen hundred and seventy-five $\frac{96}{100}$ dollars, the costs of the district court as taxed, together with the sum of three hundred $\frac{10}{100}$ dollars, the costs of the said circuit court as taxed, amounting together to the sum of sixteen hundred and seventy-six $\frac{06}{100}$ dollars.

And these libellants and appellants are advised and insist that the said decree is erroneous, inasmuch as the said decree of the district court should not have been affirmed, but should have been reversed; and inasmuch as the said libel should not have been dismissed, but that there should have been a decree in favor of these libellants and appellants for their demands and the costs in the said libel mentioned.

And these libellants and appellants, for these and other reasons,
710 feeling aggrieved by the said decree, hereby appeal from the whole of the said decree of the said circuit court to the Supreme Court of the United States, and respectfully pray that the decree of the said circuit court and the libel, answer, pleadings, depositions, testimony, evidence, exhibits, findings of facts, and conclusions of law submitted by the respective parties, and the findings of fact and conclusions of law made and filed by the said Chief Justice, and the exceptions thereto, and the exceptions to his refusal to make certain findings of fact and conclusions of law, and the bill of exceptions granted by the said Chief Justice, and all the proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause, and that the said decree of the said circuit court, and every part thereof, may be reversed, and that a mandate may be issued to the said circuit court directing that the said decree be reversed, and that a decree be entered in favor of the libellants and appellants for their damages and costs, or that such other decree be made as to the said Supreme Court shall seem fit.

New York, December , 1879.

BUTLER, STILLMAN & HUBBARD,
*Proctors for Libellants, Appellants.*

711 (Indorsed:) Circuit court of the United States, southern district of New York. Charles H. Marshall, Charles Lamson, William H. Webb, and others, libellants & appellants, against the steamship Adriatic, her engines &c., whereof the Oceanic Steam Navigation Company (limited) is claimant, appellee. Petition of appeal. Butler, Stillman & Hubbard, proctors for libellants, appellants, 111 Broadway, N. Y. U. S. circuit court. Filed Dec. 22, 1879. John I. Davenport, clerk.

712 Circuit court of the United States, southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson, Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Carey, Daniel S. Appleton, as executor of the last will and testament of Malvina W. Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, credits and effects of John Lamson, deceased; John H. Cooley, Julia W. Lewis, Mary M. Griffing, and Elizabeth H. Carter, libellants and appellants,

*against*

THE STEAMSHIP ADRIATIC, HER ENGINES, BOILERS, tackles, apparel, and furniture, whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent.

Know all men by these presents that we, Chas. H. Marshall, William

H. Appleton, & Francis A. Stout, are held and firmly bound unto the above-named respondent, The Oceanic Steam Navigation Company (limited), in the sum of three thousand five hundred dollars, to be
713 paid to the said respondent, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by by these presents. Sealed with our seals and dated this 19th day of December, in the year of our Lord, one thousand eight hundred and seventy-nine.

Whereas a final decree has been rendered by the circuit court of the United States of America for the southern district of New York in the above entitled action in favor of the claimant, respondent above named, and against the libellants and appellants; and

Whereas the said decree was filed in the office of the clerk of the said circuit court of the United States for the southern district of New York on the 21st day of November, in the year of our Lord one thousand eight hundred and seventy-nine; and,

Whereas the libellants above named, Charles H. Marshall, Charles Lamson, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson, Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Cary, Daniel S. Appleton, as executor of the last will and testament of Malvina W. Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, credits, and effects of John Lamson, deceased; John H. Cooley, Julia W. Lewis, Mary
714 M. Griffing, and Elizabeth H. Carter, feeling aggrieved thereby, have appealed from the said final decree of the said circuit court to the Supreme Court of the United States:

Now, therefore, the condition of this obligation is such that if the above-named libellants shall prosecute their said appeal to effect and answer all damages and costs if they fail to make the said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CHAS. H. MARSHALL. [L. S.]
WM. H. APPLETON. [L. S.]
F. A. STOUT. [L. S.]

Signed, sealed, and delivered, taken and acknowledged in my presence this 19 day of December, 1879.

[L. S.] DANIEL A. O'CONNELL,
*Notary Public, N. Y. Co.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William H. Appleton, being duly sworn, deposes and says that he resides at number 3 Madison avenue and does business at number 551 Broadway, New York City, and that he is a freeholder within the State of New York and worth the sum of seven thousand dollars over and above all his just debts and liabilities.

WM. H. APPLETON.

Sworn to before me this 19 day of December, 1879.

[L. S.] DANIEL A. O'CONNELL,
*Notary Public, N. Y. Co.*

715 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis A. Stout, being duly sworn, deposes and says that he resides at 21 East Ninth street, New York City, and that he is a householder within the State of New York and worth the sum of seven thousand dollars over and above all his just debts and liabilities.

F. A. STOUT.

Sworn to before me this 19 day of December, 1879.

[L. S.] DANIEL A. O'CONNELL,
*Notary Public N. Y. Co.*

The foregoing bond on appeal is approved.
Dec. 22, 1879.

SAM'L BLATCHFORD.

716 (Indorsed:) Circuit court of the United States, southern district of New York. Charles H. Marshall, Charles Lamson, William H. Webb, and others, libellants, appellants, against the steamship Adriatic, her engines, &c., whereof the Oceanic Steam Navigation Company (limited) is claimant, respondents. Bond on appeal. Butler, Stillman & Hubbard, proctors for libellants, 111 Broadway, New York. U. S. circuit court. Filed Dec. 22, 1879. John I. Davenport, clerk.

717 Circuit court of the United States for the southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, William H. Webb, and others, libellants and appellants,

*against*

THE STEAMSHIP ADRIATIC, HER ENGINES, BOILERS, &c., whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent.

It is hereby consented and agreed that the clerk of the circuit court of the United States for the southern district of New York in making up the record and return on appeal to the Supreme Court of the United States in the above entitled action, omit therefrom the pieces of wreckage alleged to be of the Harvest Queen, and the block and tackle alleged to be of the Adriatic, and the model of the engine-room of the Adriatic, and all other exhibits in the said action, and retain the same in the exhibit room of the said circuit court; the same, however, to be produced by the appellants in the Supreme Court in the argument of the said appeal unless other arrangements be made concerning them by consent of the parties or by order of the
718 court. This stipulation not to prejudice the appellee's claim, that said exhibits are not properly a part of the record on appeal.

New York, January 15th, 1880.

BUTLER, STILLMAN, & HUBBARD,
*Proctors for Libellants, Appellants.*

McDANIEL & SOUTHER,
*Proctors for Claimant, Respondent.*

(Endorsed:) Circuit court of the United States for the southern district of New York. Charles H. Marshall et als. ag'st The Steamship Adriatic, her engines, &c., &c. Consent. Butler, Stillman & Hubbard, proctors for libellants, 111 Broadway, New York City. U. S. circuit court. Filed this 15th day of January, A. D. 1880. John I. Davenport, clerk.

719 *Affidavit of service.*

United States circuit court, southern district of New York.

CHARLES H. MARSHALL, CHARLES LAMSON, WILLIAM H. WEBB, and others, libellants & appellants,
*against*
THE STEAMSHIP ADRIATIC, HER ENGINES, &C., whereof the Oceanic Steam Navigation Company (limited) is claimant, respondent.

SOUTHERN DISTRICT OF NEW YORK,
*City and County of New York, ss:*

Chas. Henry Butler, being duly sworn, says he is clerk in the office of Butler, Stillman & Hubbard, proctors for the libellants herein; that on the 12th day of January, 1880, at number 8 & 10 Pine street, in said city, he served the annexed citation on McDaniel & Souther, proctors for the claimants herein. Deponent made such service by delivering a copy of the same to and leaving the same with Michael Phillips, one of the said proctors for claimant. Deponent also served said citation on the respondent personally, by delivering a copy of the same to & leaving the same with R. J. Cortis, at his office, 37 Broadway, said Cortis being known to deponent and known by him to be the general agent for the respondent in New York City, said claimant being a foreign corporation, having its principal office in Liverpool, England.

(S'g'd) CHAS. HENRY BUTLER.

Sworn to before me this 12th day of January, 1880.
[L. S.] ADRIAN H. JOLINE,
*Notary Public, Kings County, N. Y., with cert. in N. Y. Co.*

720 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To the Oceanic Steam Navigation Company (limited):

Whereas the libellants, Charles H. Marshall, Charles Lamson, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson, Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Carey, Daniel S. Appleton, as executor of the last will and testament of Malvina W. Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, credits, and effects of John Lamson, deceased, John H. Cooley, Julia W. Lewis, Mary M. Griffing, and Elizabeth H. Carter have lately appealed to the Supreme Court of the United States

from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said The Oceanic Steam Navigation Company (limited), and against the said libellants, stating that the said decree is erroneous, and praying that the same be reversed, and have filed the security required by law:

Now, therefore, you are hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, in the Dis-
721 trict of Columbia, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand and the seal of this court, at the city of New York, in the second circuit, the twenty-second day of December, one thou-
{SEAL OF U. S. CIRCUIT COURT, SOUTHERN DISTRICT OF NEW YORK.} sand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and fourth.

SAM'L BLATCHFORD.

722 (Indorsed:) Circuit court of the United States for the southern district of New York. Charles H. Marshall, Charles Lamson, William H. Webb, and others, libellants, appellants, ag'st The Oceanic Steam Navigation Company, claimant, respondent. Citation.

Service of a copy of within citation this day is hereby admitted.

N. Y., Jan'y 12, 1880.

McDANIEL & SOUTHER,
*Proctors for Claimants.*

Butler, Stillman & Hubbard, proctors for libellants, appellants. U. S. circuit court. Filed Jan'y 12th, 1880. John I. Davenport, clerk.

723 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from letters A, B, & C, to seven hundred and twenty-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Charles H. Marshall, Charles Lamson, William H. Webb, Luther B. Wyman, George Bell, Mary R. Butler, William Nelson, Samuel Sloan, Henry Janssen, William M. Smith, Stephen W. Carey, Daniel S. Appleton, as executor of the last will and testament of Malvina W. Appleton, deceased; Helen W. Cobb, as executrix of the last will and testament of Nathan Cobb, deceased; Charles Lamson, as administrator of the goods, chattels, credits, and effects of John Lamson, deceased; John H. Cooley, Julia W. Lewis, Mary M. Griffing, & Elizabeth H. Carter, libellants and appellants, against The Steamship Adriatic, her engines, &c., whereof the Oceanic Steam Navigation Company (limited) is claimant and appellee, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 16th day of January, in the year of our Lord

one thousand eight hundred and eighty, and of the Independence of the said United States the one hundred and fourth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsement on cover:) No. 169. Charles H. Marshall et al., appellants, vs. The Steamship Adriatic, her engines, &c., The Oceanic Steam Navigation Company (limited), claimant. S. New York C. C. U. S. Filed 17th January, 1880.

OFFICE SUPREME COURT U.S.
FILED
JAN 23 1883
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

**October Term, 1882.—No. 169.**

CHARLES H. MARSHALL, CHARLES LAMSON, WILLIAM H. WEBB AND OTHERS,

*Libellants and Appellants,*

*vs.*

THE STEAMSHIP ADRIATIC, HER ENGINES, &C., WHEREOF THE OCEANIC STEAM NAVIGATION COMPANY (LIMITED) IS

*Claimant, Appellee.*

# BRIEF FOR APPELLANTS.

THOMAS E. STILLMAN,
WILLIAM ALLEN BUTLER,
*Advocates.*

# United States Supreme Court.

CHARLES H. MARSHALL, CHARLES LAMSON, WILLIAM H. WEBB AND OTHERS,
*Libellants and Appellants,*

*against*

THE STEAMSHIP ADRIATIC, HER ENGINES, &C., WHEREOF THE OCEANIC STEAM NAVIGATION COMPANY (LIMITED) IS
*Claimant, Appellee.*

*October Term*, 1882.
*No.* 169.

## BRIEF FOR APPELLANTS.

### Statement of the Case.

On the 31st day of December, 1875, the ship *Harvest Queen*, owned by the above named appellants, was sunk in the Irish channel in consequence of collision with the steamship *Adriatic*, owned by the above named appellee.

On the 17th day of February thereafter the above named appellants filed their libel in the District Court of the United States for the Southern District of New York against the said steamship *Adriatic* to recover the losses by them sustained in consequence of the said collision.

To the libel thus filed the above named appellee in due time filed its answer.

The case being subsequently tried upon the issues thus joined, the District Court, on the 10th day of May, 1877, made a final decree dismissing the said libel with costs.

From this decree of the District Court the above named appellants appealed to the Circuit Court of the United States for the Southern District of New York, and the case being there tried, the said court on the 3d day of October, 1879, rendered its decision, in conformity with which a decree was entered in said Circuit Court on the 21st day of November, 1879, affirming the said final decree of the District Court and dismissing the libel filed therein, with costs.

From the said decree the appellants duly appealed to this Court.

The appeal presents the question of liability for a collision between a steamer and a sailing vessel.

The rules of navigation which were in force at the time of the collision and which must be considered in order to determine the question of liability, are embraced in section 4233 of the Revised Statutes of the United States, and are as follows:

*Rule* 20. *If two vessels, one of which is a sail-vessel and the other a steam-vessel are proceeding in such directions as to involve risk of collision, the steam-vessel shall keep out of the way of the sail-vessel.*

*Rule* 21. *Every steam-vessel, when approaching another vessel so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse. and every steam-vessel shall when in a fog go at a moderate speed.*

*Rule* 23. *Where, by rules seventeen, nineteen, twenty, and twenty-two, one of two vessels shall keep out of the way, the other shall keep her course, subject to the qualifications of rule twenty-four.*

*Rule* 24. *In construing and obeying these rules, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in any particular case, rendering a departure from them necessary in order to avoid immediate danger.*

The facts material to this discussion, embodied in the findings of the Circuit Court (*Record, pages* 37-42), and necessarily deduced therefrom, are in brief as follows:

**1**. On the morning of the 31st of December, 1875, the steamer *Adriatic* was in the Irish Channel, bound on her voyage from Liverpool to New York, and at 2:35 o'clock was at a point about fifteen miles S.S.E. of the Hook Tower Light on the coast of Ireland. At that moment the officer on the deck of the *Adriatic* made, with his night glass, the green light of the *Harvest Queen* two points off his starboard bow. The *Adriatic* at that time was heading W.¼N.

**2**. The *Harvest Queen* left a point four or five miles S.S.E. of Roche's Point at Queenstown, Ireland, at about half-past eight o'clock in the evening of the 30th of December, 1875, bound for Liverpool. Her course to make on that voyage from that locality was E. by S. The wind at the time was southwest, and the tide was running ebb. To reach a locality where she would bear two points on the starboard bow of the steamer when the steamer was about fifteen miles S.S.E. of Hook Tower Light, and heading W.¼N., the *Harvest Queen* must have made the proper course from Roche's Point, viz.: E. by S.

*See Diagram A.*

**3**. At the time the green light of the *Harvest Queen* was made from the *Adriatic* the ship was making from eight to nine knots an hour, or a knot in seven minutes; and the steamer was making twelve knots an hour, or a knot in five minutes.

**4**. Four minutes after the green light was seen, and at

2:39 o'clock in the morning, the red light of the ship, and not the green light, was seen by those on board the *Adriatic* bearing three and a half points on the starboard bow of the steamer, which up to that moment had maintained her course and speed unchanged.

**5**. This red light remained in sight for one minute, and at 2:40 o'clock it disappeared, and the green light of the ship alone was visible.

After this, and just before the collision, the red light of the ship was again seen. These were all the lights and all the changes of lights seen from the steamer.

**6**. When the green light of the *Harvest Queen* was first seen by those on the *Adriatic*, it was distant more than two and three-quarters miles, and when the red light of the ship was first observed, such red light was more than a mile and a half distant. (*See Appendix.*)

**7**. When the red light of the *Harvest Queen* thus came in sight of those on the steamer, three and a half points on the starboard bow of the steamer, and more than a mile and a half away, the wind was blowing a fresh gale from S.W. to S.S.W. The sky was clear and star-lit, with detached clouds; the night was dark on the water, and a heavy sea was running from the southward and westward.

**8**. At 2:39 o'clock, when the red light first appeared, the wheel of the *Adriatic* was put to port. After it was so put to port, her engines were slowed. At 2:40 o'clock, when the ship's green light alone was visible to those on the steamer, the first officer of the steamer, who was on the bridge, gave the order to stop the engine, and as soon as this could be done gave the further order to back at full speed. At 2:41 o'clock the engines were put under reverse motion. Afterward the captain came from the chart room adjoining the wheelhouse, and as he passed along the deck gave, without any consultation with the officer in charge, the order, "Hard

a-starboard," and went immediately on the bridge. After the above orders were given, and according to the answer at about 2.50 o'clock in the morning, a collision occurred between the steamer and the ship, the result of which was that the ship was sunk in less than fifteen minutes, and all on board of her were drowned.

**9**. At no time, either before, at or after the collision, was the red light of the steamer exposed to the ship, and at all times the ship was to leeward of the steamer and on the steamer's starboard bow until at the instant of the collision.

**10**. The answer denies that the hulls of the vessels ever came together; certain fragments of the *Harvest Queen* produced and identified in the court below, however, not only prove the contrary, but show very clearly *how* the hulls of the vessels came together.

The decree of the Circuit Court proceeds upon the ground, not that the ship was in any way responsible for or contributed to the collision, but that the collision was the result of certain manœuvres on the part of the steamer, some of which the Court in its opinion justifies, but one and the first of which, viz., that of porting, the court admits was a mistake, but in its opinion "not such a mistake as ought to be visited with the consequences of a legal fault."

Against these conclusions of the court, appellants insist:

*First.*—The mistake made by those navigating the *Adriatic* was the sole cause of the collision.

*Second.*—All the mistakes made by the *Adriatic* were culpable, and one, viz., that of porting, was a mistake of such gross character as to have been repeatedly rebuked by the courts, and is one against which navigators are warned in elementary treatises on practical navigation.

*Third.*—This mistake of porting arose from no excusable error of judgment, but was the result either of failure to exercise any judgment whatever, which was culpable negligence, or failure to form a correct judgment upon plain facts, which was culpable incapacity.

*Fourth.*—The mistake of porting was persisted in after it should have been discovered to be a mistake, and while opportunity yet existed for its correction, and when its correction would have averted the collision.

*Fifth.*—Every manœuvre of the *Adriatic* after porting was a fault, and (except perhaps the last manœuvre) a fault contributing to the collision.

*Sixth.*—There was no way in which it was possible to bring about a collision unless the *Adriatic* put her helm to port. A manœuvre which is the only one whereby a collision with another vessel can be effected cannot be called an innocent mistake, when there is time and opportunity to form a judgment as to its effect.

The theory of the claimant of the *Adriatic*, based upon the fact that she saw the different lights of the ship at various times, is that the ship changed her course in such way as to frustrate the efforts of the steamer to keep out of the way, efforts which the claimant insists were wise and prudent; and that when the steamer finally resorted to backing as the only means of avoiding a collision, the ship persistently pursued and ran into her.

Against this theory of the claimant, appellants insist:

*First.*—Change of lights does not always, *and did not in this case* (with perhaps the exception of the first change from green to red), indicate a change of course on the part of the ship bearing the lights.

*Second.*—The answer of claimants and the findings of the court show that all the changes in the ship's lights,

except perhaps the first, were caused, not by any change of course on the part of the ship, *but were produced by the steamer's advancing from the area of the red into the area of the green light, and then backing and drifting from the area of the green light into the area of the red.*

*Third.*—That if the first change of lights from green to red was in reality caused by a change in the ship's course, *it was a change which the ship rightfully made.*

At that time no duty required the ship to keep her course. Her distance was so great and her position so much to leeward of the steamer that the change could not have caused apprehension to a competent observer on the steamer, or have necessitated any change on the part of the steamer to avoid the ship, or in any degree have embarrassed the movements of the steamer.

In addition to the above, the appellants claim that in the case of a collision between a steamer and a sailing vessel, the steamer cannot relieve herself of liability by other than clear proof of strong exonerating circumstances.

*Rocca* vs. *The Oregon*, 18 How., 570.

And it can never be rightfully held that a steamer has complied with that requirement by a narrative of the collision which leaves the manner of the collision a matter of doubt.

*The Java*, 14 Blatch., 524.

In this case the answer and the record disclose nothing except the fact that the steamer ported, slowed, stopped, backed, and starboarded. There is an absolute failure of proof that the ship was guilty of any negligence whatever, and no negligence is imputed to her by the findings of the Circuit Court.

## Assignment of Error.

The Circuit Court erred in its conclusion of law, that upon the facts as found the *Adriatic* does not appear to have been in fault.

## POINTS.

### First Point.

At the time the green light was first seen by those on board the *Adriatic* it bore two points on the steamer's starboard bow. Four minutes after, viz., at 2.39 o'clock, this green light disappeared and the ship's red light was seen three and a half points on the steamer's starboard bow. In that interval of time the steamer had gone four-fifths, and the ship four-sevenths of a mile. The course of the ship during this interval had been E. by S., and the course of the steamer W. $\frac{1}{4}$ N. At their respective rates of speed and courses the two vessels must have been, when the green light was first seen, at 2.35 o'clock, *over two and three-quarters miles* apart, in order to enable the *Harvest Queen* to broaden only one and one-half points in four minutes, thus changing her bearing from two to three and one-half points.

At the time the red light came in sight, at 2.39 o'clock, the position of the vessels was as follows: the *Harvest Queen* was three and one-half points on the starboard bow of the *Adriatic and over a mile and a half away.*

*See Diagram B, and Appendix.*

## Second Point.

Some time after, but exactly how long is not known, the two vessels came together nearly head and head.

That the actual collision happened as thus stated is quite clear from a consideration of—

*First.*—The general direction taken by each vessel in the interval between 2.39 o'clock and the moment of collision.

*Second.*—The limitations imposed upon the ship's course by her incapacity to sail closer to the wind than seven points; and

*Third.*—The evidence furnished by the locality and character of the break in the breasthook, and the injuries inflicted on the *Adriatic*.

(**A.**) Up to 2.39 o'clock the course of the *Adriatic* was W. ¼ N. Thereafter, while it was more to the northward, the heading of the steamer was not changed more than two or three points to the northward of her original course. This conclusion is reached in the opinion of the Circuit Court, and is clear from a consideration of the following facts:

(**a.**) The greatest swing to the northward that the steamer made in any one minute after 2.39 o'clock, was between 2.39 and 2.40. Her engines were then working ahead and had only been slowed. The findings make her swing to the northward during that minute *about a point*.

(**b.**) At 2.40 the engines were stopped, which must have diminished her swing thereafter.

(**c.**) At 2.41 her engines are reversed. Thereafter her port helm would affect her very slightly, if at all,

until sternway was gained (*Marsden on Collisions, page* 184), and the findings express doubt as to whether when the collision actually occurred the *Adriatic* had even gained sternway.

At the moment of collision, therefore, the heading of the *Adriatic* was probably between N. W. and N. W. by W.

(**B.**) The wind was between S.S.W. and S.W. As the ship could not sail closer to the wind than seven points, her probable course was S.E. This course she must have assumed at 2.39 o'clock, in order to show her red light to the *Adriatic*, which then bore from her a little east of southeast; and it was necessary for her to keep that course substantially unchanged in order that the steamer might be enabled to see the ship's red light at any time after seeing her green light the second time, unless indeed the steamer before the collision succeeded in getting on sternway and backing fast and far—a supposition entirely negatived by the findings of the Circuit Court.

(**C.**) The breasthook of the *Harvest Queen* was cut through about eighteen inches or two feet from her stem on the port bow, and pushed back from the frame of the ship in such a manner as to leave the bolts by which it was fastened to the frame standing in their original position. This could have been done only by the vessels meeting head and head, or nearly so. The injuries to the *Adriatic* were to her port fish davit and port anchor stock. The distance of the port fish davit and anchor stock of the *Adriatic* from her stem, and the length of the ship's bowsprit and jibboom, furnish, in a view of the locality of the injuries to the steamer, further proof that the vessels met as stated, head and head.

*See Diagram C.*

## Third Point.

When the *Harvest Queen* showed her red light the first time to the *Adriatic*, it was the duty of the officer in charge of the steamer to observe what it was, and what its bearing and change of bearing indicated as to the course of the ship, before adopting any manœuvre, and to therefrom determine whether he was called upon to do anything, and, if so, what, to enable him to keep the steamer out of the way of the sailing ship. Had he done so, it would have been apparent to him that the red light of *the ship was constantly broadening* on the steamer's starboard bow; and that the existing courses therefore, though intersecting, did not involve risk of collision; since the point of intersection, had the *Adriatic* kept her course, would have been astern of the steamer. The steamer, therefore, should have kept her course.

*See Diagram D.*

(**A**.)—The officer in charge of the *Adriatic* knew the speed of his own steamer, knew the direction of the wind, and that he was to the windward of the ship. He had seen, prior to the exhibition of the red light, that the approaching ship was either a very slow vessel or was a long way off, from the fact that in four minutes she broadened only one and a half points on his starboard bow. If she was a fast ship he knew when she was three and a half points on his starboard bow that she must be a long way off. If she was a slow ship, he knew when she was in that position on his starboard bow that there was no danger of her meeting him if he kept his course.

(**B**.)—He knew that between 2.35 and 2.39 o'clock the *Harvest Queen* was constantly broadening on his beam, and going more and more to leeward. He saw the green light change to red; he saw, or ought to have seen, that the red light, thus exhibited to him,

continued to broaden on his beam, nearly as rapidly as the green light had broadened during the minute preceding the change from the green to red. If he saw this he knew that the ship must pass astern of him. He knew, therefore, that a collision was impossible if he kept his course and speed unchanged; if he did not know these things, it was because he did not look. If he looked, but did not know what all these things indicated, he was incapable; if he did not look he was culpably negligent.

In *The Bongainville*, L. R., 5 P. C., 316, a steamer in the night ported to a vessel directly ahead. The court says:

"Being, as she says, in uncertainty as to the course "the sailing vessel was steering, it was surely not "the part of a prudent master immediately to take "the active and decided step of porting." * * * * "If she was in doubt as to the course of the vessel "approaching her, it was the part of a prudent master "to have waited until he could ascertain which course "the sailing vessel was pursuing."

In *The Rona and The Ava*, 2 Asp. Mar. Cases, 182, the steamer was held in fault for not slackening her speed and waiting to ascertain what was the real position of the schooner before she ported her helm.

In *The Scotia*, 14 Wall., page 170, the steamer was exonerated because of the *Berkshire's* failure to carry proper lights, thereby misleading the *Scotia* into the belief that she was a steamer, when, in fact, she was a sailing vessel. But certain propositions are in that case laid down as to the duty of steamers, measured by which the mistake made by the *Adriatic*, must unquestionably be adjudged a fault. This court says:

"*Nothing but inevitable accident or the conduct "and movements of the ship can repel the presumption that the steamer was negligent, arising from "the fact of collision.* Nor is the steamer called "upon to act except when she is approaching a vessel "in such a direction as to involve risk of collision.

"* * * We have already said that she was not
"bound to take any steps until the danger of collision
"should have been apprehended, and we think there
"was no danger of apprehension until the ship's
"*light was seen closing in upon her.* * * * *
"We think there was no reason for apprehension
"until the ship's light was seen closing in upon her.
"* * * * All her duty at first was to *watch the*
"*light in order to discover certainly what it was and*
"*to observe its course*, and notice whether it crossed
"her own course."

See also *The Falcon*, 19 Wall., 75.
*The Lucille*, 15 Wall., 676.
*The Carroll*, 8 Wall., 302, 306.
*The Gray Eagle*, 9 Wall., 505.
*The Esk*, L. R., 3 P. C., 436.
*The Velocity*, L. R., 3 P. C., 44

(C.) The claimant here, and with success hitherto, has sought to create the impression that the exhibition of the ship's red light at 2:39 o'clock created a situation of danger calling for instant action, and relieving the steamer from observing that degree of deliberation before porting which is inculcated by the authorities:

Reports of collision cases and treatises on navigation have been examined in vain for a single instance where the distance of a mile and a half has been considered such proximity as to create danger or warrant precipitate action. It is only necessary to cite the case of the *Sea Gull*, 23 Wallace, 165, to show the error into which the Circuit Court fell in considering that the situation was one of danger which relieved the officer in charge of the *Adriatic* from deliberately observing and accurately judging the circumstance in which he was placed.

In *The Sea Gull*, 23 Wall., *page* 165, a collision on the open ocean, on a dark night, the court says, per Mr. Justice Clifford, at page 177:

"Considering the proximity of the vessels it may be
"admitted that prompt action was required, but it is
"plain that it was bad seamanship to change the
"course of the steamer before it had been ascertained
"whether the effect of the change would be to di-

" minish or increase the danger to be apprehended " from the imminent peril. They, the two vessels, " were still *a half a mile* apart, and time enough re- " mained to adopt the proper precaution to prevent a " collision ; *nor is it any valid excuse to offer to say* " *that the officer in command of the deck was ignorant* " *of the course of the schooner when he gave the order* " *to starboard the helm, as in that event he should* " *have waited a moment for that information*, or if the " peril was impending and the danger too imminent " to justify any delay in action, then he should have " slackened speed, or, if necessary, stopped and re- " versed."

In this case there is no hint or basis for supposition that the officer in charge of the deck of the *Adriatic* thought that the ship was really nearer than she was at 2.39 o'clock. Four minutes before the ship's light was only visible through a glass ; later than that the second officer also looked through a glass to see it; not until thereafter was it reported by the lookout ; the air was clear and the night dark, and both the Hook Tower and the Coningbeg lights, the former from twelve to fifteen miles away, were plainly visible.

(**D**.) Had the officer of the deck of the *Adriatic* considered the situation at the time, before porting, he would immediately have seen that at 2:39 o'clock the ship had reached a point so much to leeward of the steamer that from that point, and with the wind as it was, the ship could have barely reached the steamer had the latter stopped and anchored then and there. *The ship was powerless to create a situation of risk or danger. It was her right, if need were, to create such a situation, but she in fact could not and did not.* All risk in this case which ever existed was created solely by the steamer ; she had the whole ocean to windward to manœuvre in, but adopted the only course that could cause danger.

(**E.**) Had the *Harvest Queen* been a man-of-war having the purpose of running down the *Adriatic*, and she

had succeeded, what would have been said of the skill and competency of the master of the *Adriatic*, who, being to the windward and about a mile and a half off, and being able to go twelve knots to the ship's eight, had been unable to escape? If the *Adriatic* in such a situation had been unable, with the skill attributed to her officers by the court below, to keep out of the way, then her owners were at fault for sending such an unmanageable craft upon the ocean.

*See Diagram D.*

**Fourth Point.**

It was a gross fault on the part of the *Adriatic* to port her helm to a ship three and a half points on her starboard bow, and sailing in such a direction that her red light must necessarily broaden on the beam of the steamer if the latter held her course. Under such circumstances no change of the steamer's course except porting could possibly have caused a collision. The officer on the deck of the steamer is charged with knowledge of this fact, and was culpably negligent or grossly incompetent in porting.

(**A.**) The commanding officer had seen the green light change to red; he knew enough of the direction of the wind to know that while that change placed him in the area of the red light the area of the green light was very close to and ahead of his stem. He knew in just how large or small an arc his steamer would swing under a port helm. He knew, or ought to have known, from the fact that the red light was broadening on his beam, that the distance between his bow and the ship's color line was very small and constantly diminishing, and that before he could show his red light to the ship's red light he would be obliged to

twice cross the track of the ship. He knew, or ought to have known, that starboarding or going ahead would insure absolute safety to both steamer and ship, and that porting would carry him down the wind toward the ship, instead of away from it.

(**B.**) If, previous to porting his helm, the officer in command of the *Adriatic* had observed the broadening of the red light on his own starboard bow, his act of porting could only have been the result of incompetency or recklessness. If, however, there was any interval of time between the appearance of the red light and the porting of the steamer's wheel, and the officer in command did not observe the broadening of the ship's red light, or if he ported immediately on seeing the red light, before he had time to observe its change of bearing, he was in either case grossly negligent.

(**C.**) The error of the court below in justifying porting, or at least in excusing it, and treating it as a mistake rather than as a fault, is predicated upon the idea that porting is a proper manœuvre whereby the steamer might be enabled to show her red light to the ship's red light, and it is urged by the claimant that it was the part of prudence not to risk an onward course, although the wisdom which comes after the event may now show that such would, in fact, have insured absolute safety. And this assertion of the claimant is based upon the supposition that the distance off, course and speed of the ship could not be accurately known. Appellants insist, however that they could and must have been so far known as to enable those on the *Adriatic* to have formed a correct judgment of the situation, if they had exercised any judgment at all. But it is clear that, since porting to the *Harvest Queen* to such an extent as to show red to red would necessitate crossing the ship's track twice, while going ahead with course and speed unchanged would have necessitated crossing the ship's track but once, such porting was a grossly improper manœuvre.

In addition, no matter what the stranger was, or how near the wind she could sail, porting by the steamer must inevitably diminish the chances of keeping out of her way.

*The Pennsylvania*, 19 Wall., 125.

Porting in such a case has been repeatedly adjudged a fault, and uncertainty, where it really existed, as to the sailing vessel's course and speed, has never before been considered an exculpation.

*The Louisiana*, 2 Benedict, 371, is noticeably in point because of the locality of the collision. The *Louisiana* was on the south Irish coast, bound for New York, heading W. by N. ½ N., and the wind was N. W. by W. She saw a red light two points on her starboard bow, at a short but uncertain distance, which proved to be on a barque beating out on the starboard tack, close hauled and heading S. W. by W.

The court says, *page* 378 :

" The steamer did right in stopping and reversing, " but she did wrong in porting without knowing the " course of the other vessel."

That case more than answers the suggestion here urged by the claimant and adopted by the Circuit Court, that the red light might be on a vessel going down the channel, or on one coming up, and that the vessel might be one that could sail close to the wind.

In the *Louisiana* the barque could sail, as the wind was, and in fact was sailing at least seven points further west than the *Harvest Queen* could have sailed.

So in *The Western Metropolis*, 2 Benedict, *page* 402, the court says :

" The steamer's helm was ported in entire ignor- " ance on the part of those on board the steamer " as to which way the schooner was heading, or " even what sort of vessel she was. This was a " fault on the part of the steamer. If she knew how

"the schooner was heading, and then ported, the act "was willful and was a fault, as she was bound to "keep out of the way of the schooner. If she did not "know, and ported in ignorance, the act was equally "faulty. It grew out of the ignorance and misman- "agement of the man at the wheel."

And in *The Hammonia*, 4 Benedict, page 522, the court says:

"The steamer ported in entire ignorance of the "course or position of the vessel whose foghorn she "heard. She should have stopped and reversed with- "out changing her helm."

See also *The Queen*, 2 Benedict, 537.

The habit of steamers to port to a red light is there commented upon and severely condemned.

In *The Monticello*, 1 Holmes, 7–12, a steamer ported to a red light one and a half points off her starboard bow. The court says:

"Taking the shortest distance, it is mathematically "demonstrable that if the helm had been put to star- "board, and the steamer had come up a point and a "half, she would have passed in advance of the "schooner and cleared her. Some of the experts "think the steamer would have cleared her by keep- "ing her course. All concur in putting the steamer "in fault in porting."

(D). As was said by Lord Ellenborough, in *Mayhew* agst. *Boyer*, 1 Starkie, 423:

"If it be practicable to pursue a course which is "safe, and you follow as closely upon the track of "another that mischief *may* ensue, you are bound to "adopt the safe course. This is the principle which "is always acted upon in cases of injuries done to "ships at sea."

In this case *The Adriatic* had a choice of three courses, viz.: to port, to starboard, or to keep her course and speed unchanged. The two last were visibly and absolutely safe; the first was hazardous, and

plainly so. The *Adriatic* chose to take it; she must be held responsible for the mischief which ensued.

*The Empire State*, 1 Ben., 57.

*The U. S. S. Co.* vs. *N. Y. and V. S. S. Co.*, 24 How., 307.

## Fifth Point.

After porting, slowing was a fault on the part of the steamer.

Slowing is prescribed only when vessels are in a position of danger resulting either from their close proximity or their respective lines of approach. Its object is to afford time to observe, or to facilitate stopping in case change of course will not avert the threatened danger. *It should precede, not follow, a change of course.*

*The Rona and the Ava*, 2 Aspinwall Mar. Cases, 182.

*The General Lee*, 3 Mar. Law Cases, O. S., 204.

*The Bougainville*, L. R., 5 P. C., 316.

In the last mentioned case the steamer was held to have "*sinned* against the rules of navigation laid down for "preventing collisions, by not slackening her speed, or "waiting, before she took the decided step of porting, to "ascertain on what side the sailing ship was going."

In the case at bar, slowing after porting increased the danger, because, if the perilous step of swinging the steamer's head more than three and a half points, so as to pass to the northward and leeward of the *Harvest Queen*, were to be taken at all, it is clear that *the safety of the step would be in proportion to the celerity with which the manœuvre was effected.*

Slowing the engines not only retarded the manœuvre, but apparently caused her to swing upon an enlarged arc *of unknown and indefinite proportions*, thus removing all means whereby the officer in charge of the *Adriatic* could judge at what point he would cross the line of the ship's course. The reasoning on this point of the court below seems to have assumed that a steamer like the *Adriatic* would swing as if hung on a hinge, and to have overlooked the principle that the action of the rudder simply causes the ship to move on an arc of greater or less dimensions.

Slowing, therefore, in this case, only aggravated the original and chief fault of porting, while it was the first of a series of movements the result of which was to deprive the ship of all knowledge that the steamer was changing her course. The result of this and the following blunders of stopping and reversing was, that *the red light of the steamer was never exposed to the ship.*

## Sixth Point.

The officer in charge of the steamer was grossly negligent in not resuming his course and speed when the green light of the ship appeared the second time.

At 2:39 o'clock the steamer ported her helm, and at 2:40 o'clock had swung to starboard one point, and was heading W. by N.¼N. when she crossed the ship's course and came again into the area of the ship's green light. The position then was one of complete safety. The ship was then on a course about southeast, and nearly a mile and a half away, and it is almost certain that she could not then, even if the wind were southwest, show her red light again to the steamer. It is absolutely certain that she could not, if the wind was anywhere to the southward of southwest. The green light of each vessel, and *only* the green light, was exposed to the other. This was clear

notice to the *Adriatic* that her porting was wrong. There still remained from five to ten minutes before the ship could get into the neighborhood of the steamer, ample time to enable the steamer to correct her blunder of porting. Had the steamer then resumed her original course, or even gone ahead with her helm amidships, *no collision could have happened.* On the contrary, her helm was still kept to port and her speed continually reduced ; this, too, for a period, as stated, of from five to ten minutes, in face of the rule that when green is exposed to green the situation is one of perfect safety, and the injunction is to go ahead. Time and opportunity being afforded the steamer to correct her original fault of porting, she should have done so.

*The Carroll*, 8 Wall., 302.
*The Lucille*, 15 Wall., 676.
*The Falcon*, 19 Wall., 75.
*The City of Antwerp*, L. R., 2 P. C., 25.

Instead of which, the steamer, now relieved from the peril induced by her blunder of porting and once again in a position of safety, declines to remain there, but by stopping and reversing stupidly *recreates* the danger from which she had just been providentially delivered.

## Seventh Point.

Situated as the vessels were with respect to each other at 2:40 o'clock, the *Adriatic* was guilty of a gross negligence or incapacity in stopping and reversing her engines. The vessels were, at the time the order to stop and reverse was given, a full mile apart, and the *Harvest Queen* was more than two points on the starboard bow of the *Adriatic*.

It would have taken the *Harvest Queen* if the wind had been such that she could, nearly eight minutes to get

to the locality where the *Adriatic* then was, when the officer in charge of the deck of the *Adriatic* gave the order to stop and back. *Stopping was merely an aggravation of the antecedent fault of slowing*, BUT BACKING WAS A POSITIVE FAULT, *without which there might have been some chance, though slight, that the collision would have been avoided.*

Had the *Adriatic* at that time gone ahead even slowly with her helm amidships, the vessels would have necessarily gone clear of each other, as the *Adriatic* would then be constantly going away from the ship's course. But when she reversed and backed she constantly *approached* the line of the ship's course. That this would be the effect of backing, the officer in charge of the *Adriatic* knew, or ought to have known.

Still he reversed his engines, and at sometime before the collision backed on to the course of the ship. This manœuvre of the steamer, assisted by the drift which was the inevitable result of the wind and the sea pouring in upon her 450 feet of exposed length, produced the collision. For a step of such gross carelessness, no adequate excuse ever has been or can be offered.

## Eighth Point.

The faults of the steamer heretofore considered. and each of them, clearly contributed directly to collision. It remains to consider faults of which the steamer was guilty, but which cannot be said to have certainly contributed to the collision.

(**A.**) It was a fault in the captain to give the order hard-a-starboard as and when he did, according to the 13th finding of the court below.

It is probable that when the captain came on deck the vessels were so near together that a collision was

inevitable, and that his order had but slight, if any, influence upon the catastrophe. It is certain that if the steamer was at the time under the influence of the port wheel, that was at once overcame by his order, and who shall say that if the steamer had continued under that influence the collision would not have been averted?

However that may be, the fact that he gave the order "hard-a-starboard" without consultation with the officer of the deck, is indicative of present fault on his own part, or previous fault on the part of the commanding officer. It is a case, in effect, of contradictory orders in a moment of peril.

(B.) The lookouts of the steamer were stationed not at the stem, but on Number 3 house, one hundred and thirty feet from the stem, and on the bridge, one hundred and seventy-five feet from the stem. They should have been at the stem. It is not improbable that the red light of the ship was never visible at the stem of the steamer, but that the steamer's stem was at all times till the instant of collision in the area only of the ship's green light. Had this been the fact, and had it been known to the officer on the deck of the *Adriatic*, it is on his own story improbable that the helm of the *Adriatic* would have been ported. It has been adjudged that the forward deck near the stem is the proper place for a lookout (*Chamberlain* vs. *Ward*, 21 How., 548, 571; *St. John* vs. *Paine*, 10 How., 557; *The John Frazier*, 21 How., 182, *N. Y. and Bal. Trans. Co.* vs. *The P. and S. S. N. Co.*, 22 How., 471), and where a vessel is found to be at the time of collision in actual violation of a well known rule of navigation, the burden rests upon her of showing not merely that her fault might not have been one of the causes of the collision, or that it probably was not, but that it could not have been. The officer of the deck should have judged of his duty by the appearances of the situation as disclosed

at the stem of his vessel, not by those amidships or at his stern.

*The Pennsylvania*, 19 Wall., 125.
*The Java*, 14 Blatch., 524.

(C.) It was a fault, and one probably contributing to the collision, that the *Adriatic*, in the then condition of the sea and wind, pursued a course which brought her into such close proximity to a sailing vessel, which was between her and a lee shore, and where the exigencies of navigation might at any moment compel the ship to take a course which would bring the two vessels into dangerous proximity.

## Ninth Point.

The faults of those navigating the *Adriatic* cannot be palliated or excused on the ground of sudden emergency or impending danger. The ship, at a distance of more than a mile and a half, showed a red light, after having shown a green light. Whether this was caused by any unavoidable accident, or by a change of course deliberately taken to avoid a danger of navigation or to accomplish a desired end, can never be known. The only witnesses who could speak to that point perished when the ship went down. Under such circumstances, the presumption is in favor of the *Harvest Queen* that she did what was proper to do.

*The Mary Stewart*, 2 Wm. Robinson, 244.

Whatever produced the change of light, the change was one which those on the *Adriatic* knew was one of frequent occurrence in navigation, and might have been expected; it was made at such a distance from the steamer that had the latter stopped at once on seeing the red light, it would have taken the ship more than ten minutes to

reach the steamer, and had the steamer pursued her course, the ship could never have reached her. There was nothing sudden, to bewilder the judgment of the officer in charge of the *Adriatic*, as there was in the cases of

*The Scotia*, 14 Wall., 170;
*The Monticello*, 1 Holmes, 7, 12;
*The Virgo*, 7 Ben., 495.

At no time was there either danger or uncertainty until the *Adriatic* created both by porting, and when the danger and uncertainty thus created had passed, they were re-created by the faulty manœuvres of the *Adriatic* in stopping and backing.

Under such circumstances, to hold that a steamer which by law is required to keep out of the way of a sailing vessel, and which, when a collision occurs, is *prima facie* liable and can relieve herself only by showing either inevitable accident or negligence on the part of the sailing vessel, may avoid condemnation by saying that all she did was to make a mistake, would seem like a denial of justice. There is no such thing known in admiralty as a mistake not involving the consequences of a legal fault, where there has been time and opportunity to observe and judge.

Among the numerous cases growing out of collision between steamers and sailing vessels, in addition to those hereinbefore cited, special attention is invited to the following:

*The Genesee Chief*, 12 How., 443.
*Mail S. S. Co.* agst. *Rumball*, 21 How., 372, 384.
*The Maria Martin*, 12 Wall., 31.
*Haney* agst. *The Baltimore Steam Packet Co.*, 23 How., 287.

**Tenth Point.**

The decree of the Circuit Court should be reversed, and the cause should be remanded, with instructions to that court to ascertain the damages of the libellants, and to make a decree therefor against the *Adriatic*, with interest and costs.

BUTLER, STILLMAN & HUBBARD,
*Proctors for Appellants.*

THOMAS E. STILLMAN,
WM. ALLEN BUTLER,
*Advocates.*

17-512

# Supreme Court of the United States.

*OCTOBER TERM, 1882. No. 169.*

CHARLES H. MARSHALL, CHARLES LAMSON, WILLIAM H. WEBB and others,

*Libellants and Appellants,*

*vs.*

THE STEAMSHIP *ADRIATIC*, HER ENGINES, &c., whereof the OCEANIC STEAM NAVIGATION COMPANY (LIMITED) is

*Claimant, Appellant.*

# BRIEF FOR APPELLEE.

JOSEPH H. CHOATE,
EVERETT P. WHEELER,

*Advocates.*

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# SUPREME COURT OF THE UNITED STATES.

CHARLES H. MARSHALL and others, owners of the ship HARVEST QUEEN, and her cargo,

Libellants, Appellants,

AGAINST

The Steamship ADRIATIC, her Engines, &c., The OCEANIC STEAM NAVIGATION Co. (Limited),

Claimant, Appellee.

October Term, 1882.
No 169.

## BRIEF FOR APPELLEE.

### Statement of Facts.

This is an appeal from a decree of the United States Circuit Court, for the Southern District of New York. The libel was filed in the District Court for that District February 17, 1876, by Charles H. Marshall and others, against the Steamship Adriatic, to recover damages to the amount of $225,000, for the loss of the ship Harvest Queen and her cargo, alleged to have been sunk by the Adriatic, off the south coast of Ireland, on the night of December 30, 1875.

The Oceanic Steam Navigation Co. filed an answer to the libel March 20, 1876. The trial continued, with some interruption, from January 5 to February 16, 1877, and a decision was rendered by Hon. Samuel Blatchford on the 26th April, 1877, dismissing the libel with costs. Judge Blatchford's opinion is at pages 14 to 17 of the Record (marginal paging 613-619).

From the decree accordingly, the libellant appealed to the Circuit Court. The appeal received from the Chief Justice of the United States a full and thorough hearing, and the decree of the District Court was affirmed, with costs. From this decree the libellants appealed to this Court.

The opinion of the Chief Justice is at pages 42-49 of the Record (marginal paging 676-688). The findings are at pages 37-42 (marginal paging 666-675).

The salient features of the case, as found by the Court, are as follows:

The Harvest Queen was on a voyage from Queenstown to Liverpool. The Adriatic was on a voyage from Liverpool to New York. (Findings 1, 2 and 5, p. 37). The wind was from S. W. to S. S. W., blowing a fresh gale. (Finding 8, p. 38). The proper course of the Harvest Queen would be E. by S., "but to make that course she was obliged to steer somewhat more to the southward." (Finding 3, p. 37). She was able to make, with the wind as it then was, eight or nine knots an hour. (Finding 4, p. 37). The Adriatic was going about twelve knots an hour (Finding 8, p. 38), and was on a course W. $\frac{1}{4}$ N. (Finding 6, p. 38).

At 2.35 A. M. December 31, 1875, Mr. Bence, the first officer of the Adriatic, descried with his glass a green light about two points on his starboard bow. (Finding 8, p. 38). He could not tell what kind of a vessel it was on or what her exact course was. He did not change his course. (Finding 10, p. 39). At 2.39 A. M., the green light which had broadened to three and one-half points on the starboard bow, or possibly something less, changed to red. He thereupon ported his helm and slowed the engines. (Finding 11, p. 39). About a minute afterwards the red light changed to green. Meanwhile the steamer's bow had gone off about a point to starboard. (Finding 12, p. 39). Immediately the chief officer ordered the engines to be stopped, and then as soon as it could be done to back at full speed. The engines were under reverse motion at 2.41. (Finding 12, p. 39). The captain had been called, came on deck, noticed that the wheel was to port and that the engines were reversed, looked ahead, saw the green light not very far away, about

two points on the starboard bow, then green and red lights appeared together, and then the red light alone. He ordered the helm hard a starboard. The effect of this when the steamer is going astern is the same as a port helm going ahead—*i. e.*, it brings the bow to starboard. After giving the order he went on the bridge. (Finding 13, pp. 39–40).

Very soon after the captain got on the bridge the Harvest Queen appeared through the darkness; she was apparently under as much sail as she could carry and headed for the Adriatic. Before anything further could be done on the steamer to avoid a collision the jib-boom of the Harvest Queen ran over the turtle back, broke, and fell over the steamer's side. The Adriatic's engines were reversing at full speed, and "if the vessel herself was not actually under sternway, she was not going ahead much, if any." She was very slightly injured by the collision and her hull not at all. (Finding 14, p. 40). She hailed the Harvest Queen, but received no answer, and there was no hail from the ship. (Finding 15, p. 40).

The Adriatic continued backing till 2.53, when her engines were stopped. After the vessels separated the Harvest Queen passed across the steamer's bow from port to starboard. Her masts were all standing and her sails all set, but in some way she was injured by the collision, and sank soon afterwards. When last seen she was apparently half a mile from the steamer, showing a green light four or five points off the starboard bow. (Finding 16, p. 40).

The Adriatic steamed slowly towards her till she became lost to view. About the time she disappeared, cries for help were heard in the water. The steamer's boats were got out, but nothing was found but a piece of timber, supposed to be a piece of her broken jib boom, and a piece of rope. At 4.30 A. M. the Adriatic again started on her voyage. (Finding 17, pp. 40, 41).

It will thus be seen that the time between the first appearance of the green light and the collision could not have exceeded seventeen minutes; nor been less than eight minutes. How much more and how much less was not found by the Court. Nor do either of the opinions delivered in the courts below elucidate this point. It is safe to infer that the evidence left it in doubt. The labor of the appellants originally

was to shorten it as much as possible. But they have failed to secure a favorable finding on this subject.

## POINTS.

### First.

The findings in this case are settled so as to spread the facts of the case upon the record, leaving inferences to the Court. And chiefly they are found as they appeared to the observers on the deck of the Adriatic. For example, the hulls and spars of the Harvest Queen were not visible from the Adriatic until just before the collision (p. 40, marg., p. 671). But her lights were descried by the aid of a night-glass when "it was so far away that it could not be seen with the naked eye" (p. 38, marg., p. 668). This method is liberal to the appellants; perhaps more so than the rule as to findings laid down in The Francis Wright 105, U. S. 381, would allow. This requires the findings to be of ultimate facts, "and not of mere incidental facts which only amount to evidence bearing on the ultimate facts of the case." This feature of the findings is referred to here to bring out distinctly the fact, sometimes lost sight of in collision cases, amid the confusion produced by conflicting testimony, that sailing rules are made for the government of navigators, who must judge from appearances and decide accordingly. And the question to be decided by this Court is whether the Courts below erred in holding that the captain and first officer of the Adriatic were free from blame in adopting the measures which they did, under the circumstances as they presented themselves at the time of the accident.

And the decision of this question involves the determination of the two following:

1. Was there negligence on the part of the steamer?
2. Was their negligence on the part of the sailing vessel?

On these questions the burden of proof is on the appel-

lants to satisfy the Court that as matter of law, upon the facts found, the steamer was negligent, and the ship skillfully navigated.

It is settled that as Chief Justice Waite says in the Illinois, 103 U. S. Rep., 298, 299: "The schooner (appellant) in this Court has the affirmative. It rests on her to show error in the decree of the Court below, or we must affirm." And even in the Court of first instance, if the steamer establishes a change of course by the sailing vessel, it is for the sailing vessel to show that this change of course did not cause the accident.

## Second.

The law of this case is illustrated very well by two cases in 91 U. S. Rep. It was held in *The Free State* (p. 200), that a steamer has a right to rely on a sailing vessel keeping her course, and to manœuvre accordingly, and if the steamer adopts a course which would avoid collision if the ship were to keep her course, the steamer is not to blame.

It was held in the Sunnyside, (p. 208,) that the sailing vessel has no right to take such a course as will bring on a collision, even if technically she keeps her course.

The object of the rules on this subject is to save both vessels from injury. The safety of the steamer is even more important than of a sailing vessel, because she has more lives on board. The only reason why the steamer is to keep out of the way is that she has greater control of her movements. If both vessels attempt to keep out of the way, they confuse and mislead each other.

See also The Nichols, 7 Wallace, 656, 665.
The Illinois, 103 U. S. Rep., 298.

In the Stephen Morgan, 94 U. S. Rep., 599,603, the Court say: "Sailing vessels approaching a steamer are required to keep their course on account of the correlative duty of the steamer to keep out of the way, in order that the steamer may know the position of the object to be

avoided, and that she may not be baffled or led into error in her endeavor to comply with the requirement."

Applying these rules to the findings, we maintain:

1. The sailing vessel did not keep her course.

2. The steamer kept out of the ship's way as far as her contradictory manœuvres would allow.

The rule is not that the steamer is to blame if the Court can see that the collision would have been prevented if she had acted differently. In every collision it is clear that the accident would have been prevented if the steamer had acted differently.

The Favorita, 18 Wall. 598, 603.
The Sappho, 9 Jurist, 560.
The City of Antwerp and the Friedrich, L. R., 2 P. C., 25.

The captain of a steamer is not bound to a nice calculation of probabilities as to whether he can cross a ship's bow.

The captain of the Ville de Havre did this, and the Loch Earn struck her amidships, because he under-estimated her speed. It is impossible to judge accurately of the speed of an approaching vessel from her lights. The captain is not to try how near he can go to the edge of the precipice. He should keep away from it. It is his duty to take such a course when a ship approaches him on an intersecting line as to carry him past her on a parallel line, or under her stern. On a parallel line he is safe.

## Third.

On the case made in the libel, it was rightfully dismissed. The faults alleged are:

1. Deficient look-out. The findings negative this. Three seamen were on the look-out, two of whom were on number 3 house, beside the officer on the bridge. Findings 6, 7, p. 38.

Number 3 house was the best place to station the look-outs. The turtle-back—which was an iron roof over the forecastle—was objectionable, not because men would be washed off, but because it was so wet as to fill their eyes with spray. Findings 6, 7, p. 38.

The light was seen in ample time to prevent a collision.

2. Running at too great speed. But it is found that if the Adriatic was not actually under sternway she was not going ahead much, if any, at the time of the accident. Finding 14, p. 40. Indeed, appellants' argument here is, that the steamer did wrong to slacken her speed. The speed had nothing to do with the collision; and is therefore immaterial.

The Illinois, 103 U. S., 298.
The Farragut, 10 Wallace, 334.
Hoffman vs. Ferry Co., 47 N. Y., 173.

3. Not keeping out of the ship's way, and not stopping and backing. The Adriatic did stop and back, and did all she could to keep out of the ship's way.

On all three points the findings are directly against the libellants. No one of the faults alleged in this Court is alleged in the libel.

The Court might very properly stop here. For the decree must be upon the pleadings as well as the proofs.

## Fourth.

But if the Court go further, the claimant has established that the ship changed her course.

It is found that there were changes in the stranger's lights. What could have caused these but a change of course? If a change of course, the steamer is free from liability if she endeavored to keep out of the way, and would have succeeded had there been no change of course.

The Favorita, 18 Wall., 599, 603.
The Potomac, 8 Wall., 590.
The Scotia, 14 Wall., 170.

If the lights were deceptive, how is the Adriatic to blame for being misled? These lights are the only guide at night.

The Virgo, 7 Bened., 495.

Affd. in Circuit Court, August 22, 1876, by Mr. Justice Hunt.

If there was a change of course by the sailing vessel, the case is clearly within the twenty-third rule prescribed by section 4233 of the Revised Statutes. If there were any additional facts which took the case out of that rule and brought it within the operation of the twenty-fourth rule, "it was incumbent on the appellants to establish them and have them incorporated with the findings."

The Annie Lindsley, 104 U. S. Rep., 185, 190.

## Fifth.

A fatal objection to the appellant's contention on this appeal is, that it has no support whatever in any but a few incidental facts appearing in the findings. "Questions depending upon the weight of evidence are, under the law, as it now stands, to be conclusively settled below."

The Francis Wright, 105 U. S., 381.

To allow the appellants to debate at length a theory as to the ultimate facts of the case, whose sole foundation rests upon the balancing of probabilities and the drawing of inferences from "certain incidental facts, which only amount to evidence, bearing upon the ultimate facts of the case" (Ibid.), would be to keep in full vitality the very evil which the change in the admiralty practice upon appeals to this court was intended to destroy.

In this connection it is to be observed that the Circuit Court refused to find that the Harvest Queen did not change her course (25th request, p. 29), and also refused to find that the Harvest Queen was not guilty of any negligence which contributed to the collision (4th proposed conclusion of law, p. 29).

## Sixth.

The practice of reviewing, in the Court of last resort, the decision of the Court of first instance, upon specified findings of fact, was adopted from and analogous to the practice which has prevailed in New York since 1848. In that State it has been uniformly held that the general finding of the trial court is to be construed as a finding in favor of the respondent upon all the material questions, though such a finding be not expressed in terms.

Grant vs. Morse, 22 N. Y. 323.

It is submitted that a similar rule is fairly to be implied from the provisions of the law as to Admiralty appeals to this Court.

## Seventh.

If, however, the Court should examine the findings in the same way that it would testimony to the like effect, we maintain that the decree of the Circut Court was right.

The first fact to be ascertained is the distance apart of the two vessels when the green light was first seen on the Adriatic. The best measure of distance is time, when the rate of speed is known.

It is found that the green light was first seen at 2.35 A. M., and that the collision happened after 2.41, and before 2.53 A. M.

1. It is extremely improbable the ship's lights could be seen over 2½ miles. Jenkins' Rule Road at Sea, 112, 116. The rule only requires two. This is in reference to the deck of an ordinary vessel. From the bridge you can see further. This is confirmed by the finding that when first seen the light was so far away that it could not be seen with the naked eye.

P. 38, marginal paging 668.

2. In ten minutes the stranger would make about a mile and a half. Her average speed that night was from eight to nine knots. (Finding 4, p. 37.) It could not have been less than eight knots, the distance from where the tug left her (4 miles from Roche's point) to the place of collision being 48 miles, and the time 6 hours. (Findings 2, p. 37; 8, p. 38).

The Adriatic's engines slowed at 2:39.

In four minutes, therefore, from 2:35, when the light was first seen, to 2:39, when the engines were slowed, the Adriatic ran four-fifths of a mile, and the stranger half a mile. They were then about a mile and a quarter apart.

It must be borne in mind that a change in course is not visible the moment the helm is changed. It is only shown by a change in the lights, and to produce this requires at least a minute.

The stranger's first change was probably caused by mistaking the steamer's headlight for the lightship. They are both white lights. It was nearly time to sight the Coningbeg lightship. This lightship was visible from the steamer. Findings 5 and 8, p. 38. That would pitch up and down like the Adriatic. At that distance it is difficult to tell whether a single light is progressing or not. Hence, while the stranger ought to have known from the bearing of the Hook light, that the headlight was not the lightship, yet the mistake was one that might easily be made. It must be remembered that the side lights of the stranger would be visible from the Adriatic, before the Adriatic's were visible to the ship, owing to the height of the bridge.

There was no occasion that the Adriatic should make any change before 2:39. Up to that time the vessels were not proceeding in such a direction as to involve risk of collision.

Jenkins' Rule of the Road at Sea, pp. 208, 209, quoting Gray, says:

6. "Every one is unanimous in agreeing that no two ships can come into collision so long as they show each other the same colored light, green to green, red to red."

16. "So long as you keep a green light opposed to a green light, or a red light opposed to a red light, no collision can happen between passing ships."

So long, therefore, as green and green were presented to each other, there was no reason for apprehension, and the Adriatic was not bound to take any steps to avoid collision.

## Eighth.

### Porting at 2.39 was right.

At 2:39 the Harvest Queen presented a red light to the Adriatic's green. "Here," as Judge Blatchford says (Record, p. 15), "was danger."

It showed:

1. That the sailing vessel had changed her course.
2. That the new course intersected the steamer's.

What was the officer of the deck to do?

The rules say, U. S. Rev. Stat., 4233:

Rule 20. If two vessels, one of which is a sailing vessel, and the other a steam vessel, are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

Rule 21. Every steam vessel, when approaching another vessel so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam vessel shall, when in a fog, go at a moderate speed.

To keep out of the way of this approaching vessel he could direct the movements of his steamer so as to cross her bow or so as to go to leeward of her.

The main force of the argument for appellant is directed to the position that the Adriatic ought to have crossed the bow of the Harvest Queen.

To support this argument it is insisted:

1. That the Harvest Queen could not, with the wind as it was, steer more to the southward than S. S. E.

2. That on this course, if both vessels continued at full speed, the Adriatic would cross the Harvest Queen's bow at a safe distance.

But the argument, like many *ex post facto* arguments,

and like all mathematical arguments which rest on uncertain premises, is fallacious.

1. It assumes that the officer of the deck knew all that we know, whereas he did not and could not

It also assumes that the direction of the wind that night was S. S. W., and that this could be determined on the steamer with absolute accuracy. This assumption is erroneous. The finding is, it was S. W. to S. S. W.

2. Every Judge of this Court has frequently observed in collision cases that men on a ship can tell the course of the wind by its effect upon their sails; but that men on a steamer moving rapidly with no sail set cannot observe it with equal accuracy. (The Hammonia, 4 Bened., 518, 519.) In other words it would have been madness for the officer to say, "Now, I know exactly the course of the wind, and I know exactly the course that the stranger can steer." He could not know either; he could not even know that she was a full rigged ship. It was his duty to say, "It is better for me to take a course which is safe and prudent than to run any risk of a collision." Porting was the wise thing to do, because it took the element of uncertainty out of the case, and, although it brought the steamer nearer the vessel, would bring the two on parallel lines (Jenkins' Rule, Road at Sea, 208, 209). On these there could be no collision. The steamer had a right to assume that she would keep the course indicated by the change from green to red. Mr. Bence did not know where she was going; for aught he knew she was going to France, and a southerly course would have been her proper course. If the wind was southwest, a barkantine or sharp built schooner could make nearly a southerly course. (See the findings in The Annie Lindsley, 104, U. S., 185. The Nichols, 7 Wall., 658. Appleton Cyc. Title Ship, Vol. 14, pp. 857, 866). This would be at right angles to the steamer's course. In other words, we would be on the two sides of a right angled triangle, and as she was less than four points on our bow, the distance from where she was to the point of intersection would be less than the distance from where we were.

3. Nor could Mr. Bence know what her speed was. A sharp built vessel would sail in a wind like that about

eleven knots an hour. If she were going 11 knots and we 12, and both vessels kept their course, a collision would be inevitable.

4. Again, the argument is based upon the assumption that the estimate of three and a half points is perfectly accurate. But the finding adds "or possibly something less." (P. 39 marg., page 670. And see the opinion, p. 44). At sea you cannot make perfectly accurate observation of the bearings of a strange light on a moving vessel.

The City of London, 4 No. Ca., 32.
The Rose, 2 W.Rob , 1

You can observe the stars, and by suitable instruments can observe them accurately. They are not moving, and changing, and pitching, as is a vessel on the surface of the water. To get the exact bearing of a vessel constantly moving is impossible. In this, then, there is an element of uncertainty, which a sailor must take into consideration. So that in porting Mr. Bence made a proper manœuvre, and if the vessel had continued to show her red light, he could not help going clear.

If this vessel had been sailing south by east, starboarding, instead of porting, would have made a collision more certain than going straight ahead, because it would have made the distance to the point at which the courses intersected greater than if the steamer had gone straight ahead.

In a word, Mr. Bence had a right to conclude that when the sailing vessel made that change to red, she would keep the course indicated by it, and, therefore, ported rightfully.

Can it be doubted that the reason he gave the order to port was in order to expose the Adriatic's red light to the stranger's red light in obedience to the directions just quoted from Gray? And can it be said as matter of law that he was in fault for following directions which are,

1. Given by the Secretary to the Marine Department of the British Board of Trade.
2. Issued by authority of that Board.
3. Approved by Commodore Jenkins of the United States Navy.

4. Published by authority of our Government.
See Jenkins' Rule of the Road at Sea, pp. 1, 2 and title page.
The Virgo, 7 Bened, 495.
The Columbine, 2 W. Rob. 27, 33.

If he had tried to cross her bow, and a collision had happened, the steamer would have been chargeable.
The Rose, 2 W. Rob., 1.
The Vicksburg, 7 Blatchf., 216.
The American, L. R., 6 Privy Co. Ca., 127, affi'g 4 Adm. & Ecc., 226.
Barret vs. Third Av. R. R., 45 N. Y., 628, 634.

## Ninth.

## Slowing was Right.

It is argued that Mr. Bence was wrong to slow at the time he ported. Here again the argument is against the rule, not against the manœuvre. The 21st rule requires the steamer to slacken her speed. If the changes which followed could have been foreseen, slowing would have been peremptory.

It is argued that there was no danger at 2:39, because the vessels were a mile and a quarter apart. But at the rate they were going, this is less than four minutes apart. The observations in the cases cited by appellants must be limited to the speed of the vessels whose conduct was under consideration.

## Tenth.

## Reversing and continuing to port.

The next allegation of fault now made is that it was wrong to reverse and continue porting after the green light appeared the second time on our starboard bow. This

argument overlooks the fact that the steamer's course had already changed. Mr. Bence had seen two changes, and how could he tell what would come next? He had got beyond the point where he could assume that the stranger was going to keep her course; he couldn't tell which way she would go. That is the reason for stopping and reversing. He wanted to get away from her as fast as he could, and therefore backed at full speed. Is not this the object of the rule as to reversing when a vessel is approaching in a direction which involves risk of collision? It diminishes the rapidity of the approach, and increases therefore the time; it is of great importance to give the sailing vessel an opportunity, she having changed her course, to get back and keep on her course. If she had kept her second green course, backing would have been undoubtedly the wisest thing; it would have given her more room and the steamer more room, and have given the steamer an opportunity, after the risk of collision had ceased, to go ahead.

Moreover, the findings are insufficient to enable the appellants to raise this objection.

Whether it was right to reverse at full speed and to continue porting depends upon the relative position of the two vessels at that time.

But neither their distance apart, nor their relative bearing is found.

Whether the change of course indicated by the change from green to red had brought the Harvest Queen on to the Adriatic's port bow is not found.

The appellants erroneously assume that this is found in their favor, and also erroneously assume in their printed argument that after 2:40 the green light broadened on the Adriatic's bow. Their diagram B shows the direct contrary after 2:39.

These are most material facts, and in the absence of any finding on the subject, how can this Court determine as matter of law that this order was erroneous?

Article 21 requires the steamer, if she is approaching another ship so as to involve risk of collision, to slacken her speed, and, if necessary, stop and reverse. Who shall say that there was not risk of collision at 2:40? The vessels were rapidly approaching. The strange vessel whose rig

and consequently whose exact course was as yet unknown, had already changed her course twice. Under these circumstances the officer of the deck obeyed the rule.

As Sir James Colville observed, delivering the opinion of the Privy Council in the Bifoged Christensen and the William Frederick, L. R. 4 Appeal Ca., 669, 672:

"To leave to masters of vessels a discretion as to obeying or departing from the sailing rule is dangerous to the public; and to require them to exercise such discretion, except in a very clear case of necessity, is hard upon the masters themselves, inasmuch as the slightest departure from these rules is almost invariably relied upon as constituting a case of at least contributory negligence."

And in the Sunnyside, 91 U. S., 209, Mr. Justice Clifford, delivering the opinion of the Court, begins with the observation:

"Marine collisions are every year becoming more and more frequent, and experience shows that a large proportion of the disasters result from the neglect of those in charge of vessels to comply with the rules of navigation."

It is true that, in that case, the Court held that the mate of a bark was in fault for running down a tug that he saw before him, not under headway, but drifting slowly. But this is put distinctly on the ground that the circumstances were altogether exceptional. The case does not in any degree modify the rule already stated. And the Court, at p. 223, quote with approval the language of Mr. Justice Curtis, in Crockett vs. Newton, 18 How., U. S. Rep. 581, 583.

"It must be a strong case which puts the sailing vessel in the wrong for obeying the rule. The Court must clearly see, not merely that a deviation from the rule would have prevented collision, but that the commander of the sailing vessel was guilty of negligence or a culpable want of seamanship, in not perceiving the necessity of departing from the rule and acting accordingly."

The cases previously cited (Fourth point) establish that if the steamer, in order to keep out of the way of the sailing vessel, adopts such manœvers as will ensure safety if the sailing vessel keeps her course, the steamer is not to blame. Even if facts subsequently ascertained, but not ascertainable at the time, show that if the steamer had kept her course at full speed no collision would have happened, it does not follow that she is to blame. That is not the test.

The Favorita, 18 Wallace, 598, 603.

## Eleventh.

### There was sufficient deliberation.

It is argued that no order at all should have been given until the exact course of the stranger could be discerned, and numerous cases were cited in support of this contention. Of these the Sea Gull, 23 Wallace, 165, is the principal. The distinction between the cases is manifest. There the steamer's lookout was careless, and did not observe the schooner till she was half a mile off. Then he observed her sails, and the mate, without observing her course, starboarded and produced the collision.

In the case at bar the course from 2:35 to 2:39 was observed. At the latter moment the vessels were a mile and a quarter apart. Then a change of course is observed, which brings the vessels on intersecting lines. In this dangerous position, produced, not by want of observation, but by the fault of the ship, the Adriatic's course is changed to one that will ensure safety if the ship keeps any course that exposes her red light to the Adriatic's red. The movement is adopted, not rashly, but as the result of observation of the ship's course and its change.

## Twelfth.

The inferences fairly to be drawn from the findings support the propositions thus stated.

What we now conjecture as to motives, could not then be known on the Adriatic. All the officer on deck could know was that there was a vessel on his starboard bow, which had already changed her course twice. His course was already changed so as to be parallel, or nearly so, to that indicated by the red light, but so as to intersect the new course indicated by the change to green. Precisely what that course

was, or how fast the strange vessel was running, he could not tell. He knew that the vessels had been approaching each other rapidly, but just how far apart they were he did not know. There might not be room for him to go clear if he starboarded, and he could not tell that there would not be another change.

He, therefore, properly reversed as soon as possible, and in a brief time the Adriatic is stopped.

The Adriatic undoubtedly remained stopped at least a minute. It would take as much time as that to overcome the inertia of so great a mass, and give her perceptible motion. Meanwhile the stranger saw that the Adriatic had swung to starboard, and committed a fatal error. She had got back on her course, from which, by a blunder, she deviated. She ought to keep it. This is the rule. She knows, or ought to know, by this time that the other vessel is a steamer, and bound to keep out of her way. She also knows that she has misled the steamer by her previous error, and tries to rectify one fault by committing another, and ports again.

This brings us to the moment when Capt. Jennings comes on deck.

The stranger, having previously ported, now is for an instant head on to the Adriatic, and shows both lights, then quickly shuts out green and opens red.

The only thing to be done with such an erratic neighbor clearly is to get away from her as fast as possible.

Capt. Jennings does not change the engines, but orders the helm to starboard. This continues to keep the vessels on parallel lines.

It may be said: Why not go ahead?

1. The stranger, being so uncertain, might have starboarded again, and in that event the Adriatic's going ahead would certainly have brought on a collision.

2. Going astern would keep the vessels apart, and give the stranger more time to decide. This, in her state of uncertainty, was in itself a gain, and this is the object of the rule requiring steamers to stop and reverse.

3. Headway could not be recovered in time to accomplish anything.

The Adriatic then goes astern. Meanwhile, the com-

mander of the stranger sees her backing, and concludes to go on his course once more. He starboards, therefore. The movements of the stranger after the accident can be explained on no other hypothesis.

This starboarding is a little too late. Instead of clearing the Adriatic, she runs her jib-boom (which projected 65 feet beyond her stem ; finding 1, p. 37) over the latter's turtle-back about 37 feet abaft the stem. Here is the fish davit. (Finding 14, p. 40).

Probably even then she might have gone clear; but the vessels are pitching in the sea, the guys or stays hook the the davit, snap goes the jib-boom, with a lateral wrench to the bowsprit, and the Adriatic backs clear. The stranger crosses her bows. When last seen she was three or four points, at least, on the Adriatic's starboard bow.

The Adriatic, in backing, swung to starboard (Finding 13, p. 40). This would tend to leave the stranger on the port bow if she kept still. She must, therefore, have sailed ahead.

Of course, this theory is largely conjectural. We only suggest it as a plausible explanation of certain erratic movements.

What is clear is this :

That if the stranger had kept her first course, or her second, or her third, she would have gone clear, and that Capt. Jennings and Mr. Bence managed their steamer so as to secure the safety of her precious freight of souls, and so as to enable the strange vessel to keep three successive and different courses with safety.

## Thirteenth.

## Starboarding just before collision.

When Captain Jennings came on deck the two vessels were again in a position of comparative safety. By Mr. Bence's manœuvres the green light of the Adriatic was again exhibited to the green light of the stranger. True,

they were much nearer than at first, but the ship needed only to keep her course to pass safely to leeward of the steamer.

The thirteenth finding is express (p. 40):

"Looking ahead, he saw a green light not very far away, about two points off the starboard bow."

But, unfortunately for herself and the steamer, the Harvest Queen again changed her course. "*Then green and red lights appeared together and then the red alone.*" (Ibid.)

Here, manifestly, the vessels were approaching, "so as to involve the risk of collision." The Adriatic's engines were already reversed at full speed. Whether they had at this moment overcome her momentum is not found by the Court. It is found that "very soon after the Captain went on the bridge," the collision happened, and that then, "if the Adriatic was not actually under sternway, she was not going ahead much, if any."

Captain Jennings directed no change in the engines, but ordered the helm hard a starboard.

Was this an error?

1. "It is said if the Manhasset (Adriatic) had advanced instead of stopping, she would have cleared the steamship (Harvest Queen). This may or may not be true, but if true she is not in fault for this error of judgment. It was a question whether to advance or to slow and back, and the emergency was so great that there was no time to deliberate upon the choice of means to escape. In such a moment of sudden danger, caused by the misconduct of the Favorita (Harvest Queen), the law will not hold the pilot of the Manhasset (Adriatic), acting in good faith, guilty of a fault, if it should turn out after the event that he chose the wrong means to avoid the collision, unless his seamanship was clearly unskillful."

The Favorita, 18 Wallace 598, 603.

2. It was argued that Mr. Bence should have been consulted. The object in calling the captain was to command and not to consult, and Bence, if the captain had not come, should have given the same order. The ship was not over half a mile distant, so that there was not much time for consultation. It was said that the captain and chief officer were at loggerheads, aud there was a failure of discipline.

That is unwarranted. The order was simply carrying out the purpose of the previous order, and was the right one to give if the captain had not come on deck. The point was to get as far away from the stranger as possible, and at the same time to keep the Adriatic's lights in full view. To carry out the movement previously adopted — at the moment she begins to get sternway, that moment the helm is starboarded. The best thing for a steamer to do under these circumstances is to keep going astern on a line as nearly uniform as possible, in order not to confuse the strange vessel. She is undoubtedly bound to keep out of the way of the sailing vessel, but when she sees the stranger making so many changes it is better for her to keep reversing as far as possible, in a uniform course, so that the stranger may know just what she is doing, and herself help as she ought. It is for that purpose we cite the Sunnyside, to establish that the ship has no right to adopt a course which will necessarily bring on a collision; that she has some responsibility as well as the steamer. Appellants, diagram B., on the contrary, shows the Harvest Queen steering for the coast of France, and running down a steamer almost motionless and right ahead of her for seven minutes.

It was argued that the reason that the captain gave the order was that he thought it would save the Adriatic from injury. Very likely that may have been in his mind. If going ahead the order to starboard would only expose the steamer's broadside; if going astern it would tend to keep her stem on; which goes to show that the steamer was gathering sternway at that time. And even for that purpose the order was justifiable. To have exposed the Adriatic's broadside to an approaching vessel would have been a flagrant fault. It was the captain's duty to preserve his own vessel as well as to avoid injuring the stranger.

It is, moreover, to be remembered that if the Adriatic was going ahead when this order was given it was at a very moderate and constantly diminishing speed. Probably by that time her headway had been about or entirely checked. It would take a minute to get sternway on her. And the alterations of the helm would not affect her head until she did get sternway. And then it would continue to

throw her head to starboard, bringing her red light into opposition to the red light of the stranger, and thus still preserve the safety of both.

## Fourteenth.

## How the ships came together and separated.

We have thus stated in detail the claimant's theory as to the way in which the collision occurred. It is not necessary to establish this in order to support the decree. But it is believed to give a clear and consistent view of the occurrence. We now propose to submit it to the test of comparison with certain facts which are found by the Chief Justice, and by which the soundness of any theory of the collision must be determined.

These are as follows :

1. "After the vessels separated the Harvest Queen passed across the bow of the steamer from port to starboard. Her masts appeared to be all standing and the sails upon them set." "When last seen she was apparently half a mile away from the steamer and showing her green light four or five points off the starboard bow. (Finding 16, page 40).

2. There was no hail from the stranger, and no reply to Mr. Bence's hail (Finding 15, p. 40). If the Adriatic had cut into the ship's hull, the injury would have been conspicuous and a cry for help inevitable.

3. There was no substantial injury done to the steamer. The marks left on her were these:

A. Anchor stock broken.

B. Port fish davit bent.

C. Light rail bent on both sides.

D. One or two light stanchions gone 28 feet from stem.

E. Scratches. (Finding 14, p. 40).

It therefore follows that the Adriatic did not cut into the hull of the stranger anywhere. The Harvest Queen

was such a solid vessel that if the Adriatic's hull had struck her, it must have been seriously injured. (See Finding, p. 37, and Drawings to face, p. 42).

4. A part of the outer jib, and jib pennant and blocks were left on the Adriatic.

5. It is also found that the shock was scarcely perceptible abaft the foremast.

These five statements are indisputable facts, and if the position taken by the appellants be at all entitled to the consideration of the Court, it must account for them all. The counsel for the appellants fail to account for any of them. Their view is that the Adriatic struck the Harvest Queen nearly stem to stern, and ran into her, or she into the steamer, on a line nearly identical with her line of motion. Their whole argument rests on this hypothesis, which is absolutely untenable.

1. If the vessels came together in that way, and she was going ahead at the rate of about nine miles, it is very obvious that she would have pushed the Adriatic before her. The Adriatic, on this theory, would not have brought the stranger's stern around, so that she lay athwart the steamer's bows. The libellant's theory does not account for her crossing the Adriatic's course and appearing on her starboard bow. Counsel for libellants argued that the starboarding of the helm, as the Adriatic was reversing, would bring the stranger's head around so as to bring her stern on our port bow. But it could not do so to any great extent. As long as the two vessels remained wedged together, and we were backing, we could pull the stranger along. It would not be until they parted that we would give her any impetus to bring her around. That impetus could not be great—could not bring her round four or five points—and yet that was the position she was in shortly after the collision. The reverse motion of the Adriatic, her bow swinging to starboard, if the Harvest Queen was motionless, would have brought the latter on the steamer's port bow. The theory on the other side fails to account for that, and for another fact which is, perhaps, still more important.

The bowsprit of the Harvest Queen was nearly three feet square. Finding 1, p. 37. It is one of the strongest

spars in the ship; there are no yards with heavy sails above it, to make it unsteady, and it is almost a part of the ship's hull. If, the collision happened as claimed by appellants the bowsprit would have been broken, it would have brought the foremast with it, and even if it did not bring that down, it must have brought down the fore topmast. These masts are fastened to the bowsprit by strong wire stays. With all the strain from the gale, the vessel pitching in the heavy sea, is it not evident that if the bowsprit went, the fore topmast would go too? These remaining after the collision, does it not follow that the bowsprit was not detached?

2. Again, on the libellant's theory, how do you account for the absence of a hail from the stranger? Here was a vessel, conscious that she was injured—would there not have been a cry for help? The appellants' theory is, that the Adriatic must have remained wedged for a minute, at least, in the Harvest Queen? Would not the impulse of these sailors be to jump on to that bowsprit, and then on to our deck? Take any collision case reported in the books. There is always an endeavor on the part of the sailors to get aboard the larger vessel. Here they had every facility for so doing. A man moves quickly when his life is in danger. The theory on the other side fails to account for these facts.

3. It is clear that if the steamer had done this injury in the way described by the libellant's counsel, she would have been injured in her hull; whereas, the finding is, that there was no damage, except a slight one done to the paint, which might have been caused by the scraping of the anchor stock, or by the jib-boom. The bulk of the injury that was done to the Harvest Queen was above the water line, so that the injuries, if any, to our hull, would be above the water line. Is there any escape from that? The drawings show that the Harvest Queen projected very far at her bow. If the steamer ran into this great mass of timber, projecting far beyond the water line, the injury would have been above ours. The higher the hull the greater the injuries would be, because of the greater amount of timber to pass through.

Her hull was 16 to 18 feet above the water at the top-

gallant forecastle. At the cathead the rail projects 12 feet beyond the water line. This is shown by measuring the plan (which, in the printed record, is one-eighth of an inch to the foot). The marks are all above deck. They must have been caused by something coming from above and this was:

The ship's jib-boom, which fell on the turtle-back and slid off.

All these marks are accounted for by the following statement:

The stranger, swinging under a starboard helm, ran her jib-boom, the end of which was 63 feet outside her hull, over the Adriatic's turtle-back. As the vessels rose and fell in the heavy sea, the guys caught in the davit or the anchor stock; the Adriatic backing, snapped the jib-boom off at the cap. This brought the martingale stays, which are of chain, against the side of the Adriatic. The boom came down with great force, like an arrow from the bow, or a stone from a catapult. It bent the davit. The force of the blow was expended on this. Sliding from that it bent the rails and slid into the water. The anchor stock may have been broken by the jib-boom striking it, or it may have been broken by the bowsprit striking it. This heavy spar, striking it like a lance, would easily break it. If the jib guys or martingale stays caught on that, it may have been broken by the jerk of the Adriatic's movement astern. All this would not sink the Harvest Queen immediately, though it might have strained her, and opened her seams, so as to cause her to sink later in the night.

One other consideration is not to be overlooked in this connection. On a vessel bound from Queenstown to Liverpool, the anchor would be on the bulwarks with the chain running from it on the outside of the ship to the hawse-hole. To have cut into the Harvest Queen at her stem, as it is claimed we did, we must have cut right through the anchor chain, or carried it before us, which would be more improbable still. When the Kearsarge had her fight with the Alabama, she protected herself by putting cables around her sides. Yet, we are asked to believe that a blow sufficient to break through this great chain

would produce no injury to the Adriatic. It is, however, possible that the anchor may have been insecurely fastened, and that the blow which broke the jib-boom may have been sufficient to detach the anchor from its fastenings. In this case, it would have fallen overboard with great violence and rattling of chain, and this may have cut down the side of the ship and caused her finally to sink.

Drawings are submitted in this Court by libellant's counsel. They omit the martingale, and the martingale stays which go down under the bowsprit. It may be that one of these stays hooked over the anchor stock, and it may not be necessary to resort to the assumption that the stranger was on a wave sufficient to bring the guy down to the level of the davit.

The ship's jib-boom undoubtedly scraped against our side. This caused the scratches. The martingale stays rattled against the steamer's side. Probably her own chain was jarred by the shock to the anchor stock.

It was argued in the District Court that the bowsprit of the Harvest Queen was so much higher than the Adriatic, that unless the steamer ran pretty well into her it could not have done this mischief. But if she ran a little by, or if she was on one wave and the steamer on another, it might easily have been done. The Adriatic was 450 feet long, the Harvest Queen 185—an aggregate of 635 feet. It would be impossible that they should be influenced by the same wave at the same time. The very pitching of the stern would bring her bowsprit down to the level of the anchor stock. And it is expressly found that the Harvest Queen's jib-boom fell down over the side of the steamer.

4. This theory also accounts for the pieces of sail and appurtenances left on the Adriatic's bow. If the jib-boom ran over that bow the outer jib pennants would catch on the davit and tear away from the sail to which they were attached.

5. Then there was no shock abaft the steamer's foremast. It is argued that the shock would not be felt so far as that, and the illustration was presented of a railway collision where the injury and the shock are often confined to a few cars. Why is that? Because the cars that compose the train are separated from each other, and the force of

the blow is expended upon the first part of the train, and is not transmitted because of the intervening platforms and bumpers which diminish its effect. In a single body like the Adriatic, there are no bumpers to take away the force of the shock. It is violent from the bow to the stern, and especially in the centre of motion, in the delicately poised machinery, and in the engine-room.

When a steamer pitches, the moment she brings her screw out of the water you feel it all over the ship. Reversing the engine produces an effect all over the ship, even to the stem; and if the reverse beat of a blade of iron in the stern of a vessel produces a motion of the stem, is it possible that the impact of a vessel like the Harvest Queen, weighing five thousand tons, should have produced no shock aft? That is incredible, and therefore the view taken by the other side entirely fails te account for the lack of any shock abaft the foremast.

This theory is consistent with the voices in the water.

The men on the forecastle—the look-out—may have tried to jump on board and missed. Or they may have gone out on the bowsprit to cut away the wreck of the jib-boom, and lost their footing. It is certain they did not come from a ship that had just sunk.

Her light disappeared at least half a mile from the Adriatic, and nearly abeam, and to leeward. (Finding 16, p. 40.)

Voices would not be audible from this distance against the wind. The voices were heard immediately after the light disappeared. Men could not swim that distance in such a sea, which "was high and running strong from the southward" (finding 8, p. 39), nor any distance in the time given.

The Adriatic, after the collision, backed and then went ahead slowly. (Findings 12, 16, 17, pp. 39, 40.)

This was evidently with the design of being more under control and of facilitating the lowering of the boats, should that become necessary. These movements would bring her nearly to the place of the accident, where men lost would be struggling for life.

Moreover, if the Adriatic had struck the stranger on her hull, her bowsprit and jib-boom would have projected

far beyond the Adriatic, and would have been uninjured; nor would any injury in that case have been done to the upper works of the Adriatic, and the stranger would have filled and gone down immediately.

But it is clear she sank much nearer shore. The heavy pieces of oak timber, filled with iron spikes, were picked up very near the place where the light piece of pine, which formed part of the name board, was found. (Finding 20, p. 41.) The former would not be affected by the wind. The latter would. If the Harvest Queen sunk at the place of the accident, these would not have gone ashore at the same place. But they did.

The breast hook could have been pried off by the lateral strain on the bowsprit as well as by the direct impact of the steamer. The latter, however, would have injured the steamer, the former would not. A theory must account for all the facts or it is entitled to no weight.

## Fifteenth:

We were asked in the Court below, "Why did you back away from the ship?" There is no finding that we did back away for any specific time. The reasons for so doing are entirely sufficient. The backing swung the steamer's head to starboard, and brought her into a position to go ahead and communicate with this ship. Capt. Jennings is criticised for going ahead slowly. He was in this dilemma. If the breaking of the jib-boom did no serious injury to the stranger, he could go on his course. But if she did need assistance, the proper way was to steam ahead slowly, and thus be able to stop quickly when the stranger should be reached. He could reach her more quickly with his steamer than with the boats. In either view of the case his duty was to go ahead as he did, and although he did not think help was needed, he went to see whether it was needed or not.

## Sixteenth.

## Color Line.

The theory was advanced in the Circuit Court, and maintained with great ingenuity, that all the changes in the apparent lights of the Harvest Queen, except the first, were due to the changes in the Adriatic's position in reference to what counsel called the color-line—that is, the line separating that part of the sea upon which the green light alone would be visible from the portions upon which the red light would be. This theory, which is embodied in visible form in Diagram B, rests upon the following assumptions:

1. That at 2:39 the Harvest Queen changed her course from E. by S. to S. E.

2. That this would expose her red to the Adriatic's green.

3. That at 2:40 the Adriatic had advanced so far as to over-pass the color-line and come within sight of the ship's green light.

4. That after having thus once crossed the ship's bows, the Adriatic backed across them again, thus first bringing both lights into view and then red.

5. That this produced the collision without further change on the part of the Harvest Queen.

To this we reply:

1. The change conceded was a fault. At 2:39 the two vessels were, as has been shown, about a mile and a quarter, or less than four minutes, apart. The Adriatic's head light and her green light must have been distinctly visible from the ship. The Adriatic was on her starboard bow. Under such circumstances the ship had no right to port so as to exhibit a red light to the steamer, and thus show a course intersecting that of the latter.

Moreover, why should the course of the Harvest Queen have been changed to southeast and so continued for seven minutes and a half. This was not her proper course. A change before she observed the steamer's side lights is easy

to understand. But to continue that course for that length of time with the steamer's lights continually drawing closer to her is inconceivable.

The second and third assumptions are possible, if the first be conceded. But it could not be known on the Adriatic whether the changes of light were caused by such a change of course. At night she could only be guided by the lights. These are required by the rules. Even if it be conceded that they are not infallible guides, it does not follow that a steamer is in fault for acting in reference to the appearance of the lights.

4. The fourth assumption is not justified by the findings. It is vital, however, to this ingenious theory, which, without it, collapses. The finding is that when the green light, for the second time, changed to red, it bore two points on the Adriatic's starboard bow. But it is not found that she was then backing. The finding, as has been shown, leaves this undetermined, with the inference that the Adriatic was still slowly going ahead, though her engines were reversed. And the Chief Justice, in his opinion, says, pp. 47, 48 marg. p. 684 :

"I am satisfied, however, that the forward motion had not then been overcome."

Unless, however, the Adriatic had smart sternway, she could not have backed clear across the Harvest Queen's bows.

This theory, also, asks us to believe or guess, in the absence of any finding, that it would require the Adriatic six minutes and a half to stop, after the order to reverse at full speed was given, and that she would go sideways all this time, like the Goede Vrouw, in Diedrich Knickerbocker.

For want of a finding as to how much the Adriatic swung to the starboard, the brief presses Marsden on Shipping into the service, forgetting that the effect of the propeller, in reversing, upon the swing of the vessel depends entirely upon whether it is a left-handed or right-handed screw.

Moreover, this fourth assumption is entirely at variance with the position of the two vessels after the collision and with the other facts in reference to the injuries to the two vessels discussed under the seventh point; and, apart from

all this, it is taxing our credulity too severely to ask us to believe that the Adriatic backed right across the bows of the Harvest Queen.

The fifth assumption falls with the fourth; and the whole fabric, with its ingenious diagram, may be finally dissipated by the crucial test that the libellants failed to secure a favorable finding in reference to it, and cannot, therefore, raise it in this Court.

The Annie Lindsley, 104 U. S., 185.

## Seventeenth.

The judgment of the Liverpool Court of Inquiry, after eight days of investigation, was favorable to the steamer. A copy of it is annexed.

## Eighteenth.

The decree of the Circuit Court should be affirmed with costs.

JOSEPH H. CHOATE,
EVERETT P. WHEELER,
*Advocates for Appellee.*

# BOARD OF TRADE INQUIRY.

## COLLISION BETWEEN THE ADRIATIC AND THE HARVEST QUEEN.

NINTH DAY, FEBRUARY 10.

### The Judgment.

Mr. RAFFLES delivered the judgment as follows:

The Court has endeavored to give to the evidence which has been brought out before it, in the course of this protracted inquiry, the grave consideration which its very great importance demands. As affecting the conduct of the master of the Adriatic, with which alone this Court has to deal, two points seem to call for decision: first, was the master of the Adriatic to blame in regard to the collision which took place on the 31st of December last? and secondly, did he, after the collision, do all that was required of him to save life and to render assistance to the vessel with which he collided? The Court is satisfied, upon the evidence, that between half-past two and three, on the morning of the day in question, the steamship Adriatic and a full-rigged sailing ship came into collision off the coast of Wexford, and the Court has no doubt that she was, as alleged, the Harvest Queen, which left Queenstown on the previous evening, bound for Liverpool, and which there is every reason to believe has been lost. The Court is of the opinion that the master of the Adriatic is not in default as regards the collision itself. The chief officer, Mr. Bence, who was in charge of the steamer when the stranger's green light was seen on his starboard bow, took the usual and right course of porting his helm, when the green light changed to red; and he also acted rightly when, on the green light showing again, he stopped and reversed the engines full speed. The master, hurrying on deck when called, seeing the stranger's green light, which had then

again come into view, ordered the helm hard a starboard. There would have been no question as to the propriety of the order had the vessel been going ahead; but the master appears to have been under a misapprehension as to the way in which the steamer was going through the water at that moment. Having, however, lost her way, she never answered her starboard helm, her bow still continuing to fall off to starboard, and in the opinion of the Court this order could not in any way have contributed to the collision; and when the master reached the bridge, and found that the steamer was going astern, and the ship's red light again showed, he was right in keeping the helm unchanged. The Court, therefore, acquits the master of the Adriatic of all blame in respect of the collision. There remains for consideration the very serious charge, that he did not render such assistance as he should have done to the vessel with which he had collided. In regard to this matter, the master rightly and promptly lost no time after the collision in ordering the boats to be cleared away; and as to his countermanding that order, the Court considers that when he found the Harvest Queen increasing her distance from the steamer, he acted with better judgment in following her with the steamer than he would have shown had he at that juncture lowered the boats into the water for the purpose of looking after her. But when cries fer help were heard in the water, the master at once stopped his ship and lowered his boats with as much despatch as possible, and ordered them to go to the spot whence the cries had proceeded, and also to search in the direction of the ship, whose green light was then visible. After looking about for three quarters of an hour without finding any one in the water, or hearing any further cries, the boats returned to the steamer, on a signal being shown to recall them. The Court cannot say that the master was wrong in recalling the boats. He probably believed (and he had good grounds for the belief) that the cries he heard came from a man or men who had either fallen or been knocked overboard at the time of the collision, as, when the cries were heard, the green light of the ship was still visible at a considerable distance, and with the heavy sea running at

the time, the master might well conclude that further search for the unfortunate men in the water would be in vain. It was strongly urged upon the Court that the Adriatic should have remained upon the scene of the disaster at any rate until daylight, and this point has received the most anxious and careful consideration. The Court cannot lose sight of the fact that the master of the steamer had under his charge over 200 souls. He was on a lee shore, in the neighborhood of dangerous rocks and shoals.

The wind was increasing, the weather was getting thicker, and the Hook light was becoming indistinct, and the Court is of opinion that to keep his ship on the spot would have been attended with considerable risk; the only safe course open to him would have been to put her head to the southward, and keep his ship under command by steaming ahead slowly till daylight, when he could have returned to the scene of the collision; but believing, as he did, that the hulls of the two vessels had never been in collision, and that no fatal injury had been received by the Harvest Queen from the Adriatic, and that she had sailed away up the channel, a belief which the Court, after an entire consideration of the evidence, could not say was altogether unwarranted; the Court cannot condemn the master for proceeding on his course, as he did, after consulting with his chief officer; and, according to the statement of the master, after having had the advantage of the opinion of Capt. Whitehurst, an experienced master in the American merchant service, the Court returns to Mr. Jennings his certificate. The Court cannot close the judgment in this case without expressing regret that the entry, as to the collision, in the official log, was not more candid and explicit in its relation of the circumstances. And the Court has also to regret a want of frankness, amounting to a reticence, in the evidence, especially of the first and second officers of the Adriatic, which was calculated to prejudice the Court, and certainly not to serve the master. The Court also thinks that the master would have done well to have informed the British Consul immediately on his arrival at New York of the circumstances of the collision, and to have delayed the painting of the ship's bows until ample opportunity had been given for inspection.